SUPREME COURT OF INDIA

Chandran @ Manichan @ Maniyan

Vs.

State of Kerala

Crl.A.No.1528 of 2005

(V.S. Sirpurkar and Cyriac Joseph,JJ.,)

04.04.2011

JUDGMENT

1. This judgment will dispose of Criminal Appeal No.1528 of 2005 (Chandran @Manichan @ Maniyan v. State of Kerala) filed by Chandran (accused No.7), Criminal Appeal No.1530 of 2005 (Manikantan @ Kochani v. State of Kerala) filed by Manikantan (original accused No.4), Criminal Appeal No.1531 of 2005 (Manoharan v. Kerala State Rep. by Public Prosecutor) filed by Manoharan (original accused No.30), Criminal Appeal No.1532 of 2005 (Vinod Kumar @ Vinod v. State of Kerala) filed by Vinod Kumar (original accused No.8), SLP (Crl.) 842 of 2006 (Suresh Kumar @ Suresh v. State of Kerala) filed by Suresh Kumar (original accused No.25) and Criminal Appeal No.800 of 2006 (Herunessa @ Thatha v. State of Kerala) filed by Herunessa (original accused No.1). Out of all these appeals, the appeal filed by accused Herunessa @ Thatha has become infructuous since accused No.1, Herunessa is reported to have expired.

2. Leave granted in SLP (Crl) 842 of 2006.

3. All the accused-appellants stood convicted by the Sessions Judge, Kollam by its judgment dated 16.7.2002 for various offences punishable under Sections 120B, 302, 307, 326, 328 and 201 read with Section 34 of the Indian Penal Code (IPC) as also under Sections 55 (a) (g) (h) (i) , 57A and 58 of the Abkari Act. We need not refer to the punishments awarded to all these accused persons. Suffice it to say, that practically all of them were convicted for offences under Section 302, IPC Section 57A (1) (iii) of the Abkari Act which is a State Act for the State of Kerala. The accused persons under those Sections were sentenced to suffer rigorous imprisonment for life. They have also been awarded lesser sentences and have been slapped with heavy fines. They appealed against this verdict, the conviction and the sentences before the Kerala High Court which has set aside the conviction for offence under Sections 302 and Section 307, IPC, however, maintained the convictions of most of the appellants for offence under Section 57A (1) (ii) under the Abkari Act along with convictions under Sections 324, 326, 328 and 201, IPC as also the other Sections like Section 55 (h) and (i) and 58 of the Abkari Act. In short, most of the accused persons were directed to suffer rigorous imprisonment for life and, as the case may be, rigorous imprisonment for 10 years

along with fine. All these appeals were heard jointly since they were against the common judgment. As many as 48 accused persons came to be tried before the Sessions Judge. Some of them were acquitted at the stage of trial and some others at the appeal stage, leaving the above mentioned appellants in the fray who are before us.

4. Alcohol has already proved itself to be one of the major enemies of the human beings. However, its grip is not loosened in spite of the realization of the evil effects of alcohol on the human life. On the other hand, the unholy grip is being tightened day by day. Therefore, when the standard and healthy alcohol in the form of liquor is not available or is too costly for a common man, the poor section of the society goes for illicitly distilled liquor which is sold by the bootleggers. The conscienceless bootleggers - thanks to their avarice for money - take full advantage of this human weakness and without any compunction or qualms of conscience, distill illicit liquor and then to increase the sale and to gain astronomical profits make their product more potent at least in taste so as to attract the poor customers. Such poor customers invariably become the prey of such unholy avarice on the part of the bootleggers and in the process even lose their lives at times or suffer such injuries which are irreparable like total blindness etc. and that is precisely what has happened in this case.

5. On 22.10.2000, in the wee hours, Sub-Inspector of Police, Paripally received information that one Raghunatha Kurup of Kulathoorkonam and seven others were admitted in the Medical College Hospital Thiruvananthapuram for treatment on account of illness caused by consumption of illicit liquor. He reached the Hospital and recorded the first information statement of Raghunatha Kurup at 2 a.m. By that time, one Sasidharan who had consumed the illicit liquor had died and two others were lying in unconscious condition. On that basis, Sub-Inspector registered Crime No. 268 of 2000 under Section 302, 307, IPC read with Section 34, IPC and under Section 57A of the Abkari Act. Little did he know the exact ramifications or vastness of the grim tragedy which was about to take place. Three other similar crimes were registered at Kottarakkara police station and this was followed by further crimes registered in the same police station being Crime No.809 of 2000, Crime No.810 of 2000, Crime No.811 of 2000 and Crime No.817 of 2000. All these crimes were consolidated with crime No.268 of 2000 of Parippally police station and the information started trickling regarding the consumption of spurious liquor by poor persons and their admittance to the hospital from within Anchal and Pooyappally police station limits. Similar incidents had taken place within the limits of Mangalapuram police station and the crime was registered there also. Investigation machinery quickly responded to the happenings and a special investigation team (SIT) was constituted as per the directions of Director General of Police, Kerala, Thiruvananthapuram on 25.10.2000 which was to be headed by Shri Sibi Mathews, IPS who was the Inspector General of Police. He was to head the team of seven persons, six other persons being the police officers of the level of Inspectors and above. All these earlier mentioned crimes were taken over for investigation by SIT. They started investigation in all the concerned police stations where the crimes were reported. It was realized that as many as 31 persons had lost their lives, six persons had suffered total blindness in Kollam District whereas more than 500 persons suffered serious injuries on account of the drinking of the illicit liquor.

6. Unfortunately, all this was going on in God's own country, Kerala which was turned into hell by the liquor mafia. Eventually, investigation by the SIT was completed and the final report was filed before the Judicial Magistrate, 1st Class, Paravoor on 21.1.2001 against 47 persons. After the charge-sheet was filed, accused No.48 was also added by a supplementary charge- sheet. However, as many as four accused persons, they being accused Nos. 34, 36, 39 and 45 died on account of consumption of their own medicine, the spurious liquor. Accused No.3 had lost his eye sight completely. Few accused were absconding, their cases were split up. Rest of the accused were sent for trial before the Sessions Judge before whom a marathon trial took place wherein 271 witnesses were examined, as many as 1105 documents were proved and relied upon and over 291 material objects were produced. The defence also examined as many as 17 witnesses and relied on 110 documents being Exhibits D-1 to D-111.

7. Prosecution alleged that methyl alcohol which is a poisonous substance used to be brought from Karnataka and mixed with Ethyl alcohol. At times, this concoction was mixed with toddy and other essences resulting in a drink called Kalapani. The methyl alcohol used to be mixed with ethyl alcohol which was also illegally and illicitly procured in order to add potency to the drink so that more and more people would purchase the same. These sales were made from the regularly licensed toddy shops and from other places. There was well-oiled machinery, huge in proportion, the main component of which was Chandran (accused No.7) who was a toddy contractor. His brothers, Manikantan (accused No.4) and Vinod Kumar (accused No.8) were deputies helping him. This group had servants like Balachandran (A-15), the Manager. Even their wives did not lag behind. There were laboratories, assistants and labourers. There were drivers and a fleet of vehicles which were used for importing methyl alcohol from Karnataka and then it used to be brought to the laboratories maintained by Chandran (A-7), Manikantan (A-4) and Vinod Kumar (A-8) where the mixing used to take place. Accused Nos.A-4 (Manikantan @ Kochani), A-7 (Chandran @ Manichan), A-8 (Vinod Kumar), A-15 (Balachandran), A-18 (Usha), A-19 (Sugathan), A-20 (Vijayan), A-21 (Rassuludeen), A-22 (Suresh @ Sankaran) and A-23 (Binu @ Monukuttan) were active in firstly procuring the methyl alcohol and then mixing the same in the laboratories and then distributing the same in the whole district, more particularly, to the various outlets for sale of toddy. Chandran (A-7) used to control these shops which were either in his name or some other names. It was alleged by the prosecution that all these accused persons hatched a criminal conspiracy in or about March, 2000 prior to the auction of toddy shops for the period between 2000-01 and well-oiled machinery was created for importing methyl alcohol from a place called Arihant Chemicals, Bangalore. Chandran (A-7) controlled toddy shop Nos.1 to 26 of Chirayinkil Panchayat so that there were easy outlets available for the sale of spurious liquor. Once methyl alcohol was imported, it used to be brought to the huge laboratories constructed for that purpose and carefully concealed which was located at Pandakasala. It was alleged by the prosecution that Gunasekharan (A-17) purchased two barrels of methyl alcohol as part of the criminal conspiracy from Arihant Chemicals, Bangalore and the same was entrusted to Anil Kumar (A-16) for import to Kerala for the purpose of its mixing with the spirit ethyl alcohol and for sale by Manikantan @ Kochani (A-4), Chandran @ Manichan (A-7), Vinod Kumar (A-8), Balachandran (A-15),

Usha (A-18), Sugathan (A-19), Vijayan (A-20), Rassuludeen (A-21), Suresh @ Sankaran (A-22), Binu @ Monkuttan (A-23). It was brought by Anil Kumar (A-16) in a Fiat car which had fake registration number. This Fiat car was fitted with a secret tank and thus the poisonous methyl alcohol was imported and was mixed with 56,200 litres of spirit which was also imported to Kerala by Mahesh (A-12), Salil Raj (A-13), Ashraf (A-14) and Sakthi (A-48). All the mixing was done at Pandakasala and then it was given for distribution to Manikantan (A-4) who transported it through Anil Kumar (A-5), Shibu (A-6), Santhosh @ Kochu Santhosh (A-9), Santhosh @ Valiya Santhosh (A-10), Mohammed Shaji @ Shabu (A-11), knowing it to be injurious to health, through various other vehicles.

8. The said methyl alcohol which was mixed in the Pandakasala godown meant for toddy shop Nos.1 to 26 of Chirayinkil Panchayat and then got distributed by the above accused persons who all knew very well that it was injurious to health and was fatal. For this purpose, cars bearing registration No. PY01M-6582 and TN-1-R 9283 and a Van bearing registration No. KLOQ-2787 were used.

9. It was further the case of the prosecution that from this poisonous spirit, 35 litres were taken in a car bearing registration No.TN-1-R 9283 on 20.10.2000 at about 3.30 p.m. with the assistance of Anil Kumar (A-5) and Shibu (A-6) and was given to Herunnesa (A-1), Rajan (A-2) and Raju @ Mathilakom Raju (A-3) in the house of A-1 and A-2 at Kalluvathukkal. It was alleged that accused Nos.1 and 2 and 3 diluted the spirit by adding water and sold it through their outlets because of which 18 persons died due to consumption of spurious liquor. It was pointed out that two persons lost their eyesight and number of others sustained grievous injuries. It was further alleged in the charge that Manikantan (A-4) with the help of Anil Kumar (A-5) and Santhosh (A-10) transported 10 Kannas full of spurious liquor having capacity of 35 litres in the car bearing fake registration No. KL 01M 7444 on 20.10.2000 night to Charuvila Puthen Veedu, Anthamon Muri and Kalyanpuram village at Kottarakkara and there the said liquor was sold by A-30 with the assistance of A-31 who earlier diluted the spurious liquor by adding water at the house of A-30 and packed liquor in polythene covers containing 100 ml each. The said pouches were also sealed with the help of sealing machine. Then the pouches were loaded in one Maruti car on the same day and the same was entrusted to A-39, Latha Kumari. Even these accused knew the spurious nature of the liquor and its lethal effects. Some liquor out of this was sold to one Soman Pillai and CWs 630 to 634 and on that account Latha Kumari and Soman Pillai died while others suffered serious injuries.

10. It was further alleged by the prosecution that the remaining five Kannas full of spurious liquor were then transported in the car bearing fake registration No. KL 01M 7444 with the help of accused Nos. 5 and 10 on the same day near the shops of CWs 633 and 664 at Pallikkal in Mylom village at about 8.45 p.m. and entrusted the same to A-25 who with the help of some other accused like Sujith (A-24), Dileep (A-26), Shyjan (A-27), Anil Kumar @ Kittu (A-28), Rathy (A-29), Sashikumar (A-32), Shibu (A-33), Rajan (A-34), Sudhakaran (A-35), Pachan (A-36), Santhosh (A-37), Samuel (A-38), Sathyan (A-40), Soman (A-41) sold the spurious liquor at various places in Kottarakkara Taluk at Pallikkal, Kalyanpuram Puthoor and Mylom after diluting the same with water. Because of the consumption of this

liquor, as many as 7 persons died and out of them Rajan (A-34) and Pachan (A-36) also died by consuming the same liquor. Some others lost their eye sight and still some others sustained grievous injuries.

11. Another round of 35 litres of kannas was taken by A-4 with the help of all on 20.10.2000 in the evening to Attingal Avanavancherry and was sold to A-42 who along with A-47 took the spurious liquor in an auto rickshaw driven by A-47 near the CRPF camp in Thiruvananthpuram District and sold it to A-45 who further sold about 14 litres of spirit to A-44 and 7 litres of spirit to A-46 on 25.10.2000 in the evening. The said liquor was diluted by A-45 with the help of A-43 by mixing water and converted it into arrack and further sold it to a person called Bhaskaran Kutty Nair. It is alleged that because of the consumption of the same liquor, A-45 himself died while some others suffered grievous injuries.

12. The prosecution also alleged that A-44 diluted the spirit by adding water and sold it on 26.10.2000 near Apollo colony to CWs 433 to 456. They consumed the same liquor and sustained grievous injuries and one of them lost his eyesight.

13. The prosecution alleged that the conspiracy was hatched in March, 2000 amongst all the accused and because of the criminal act on the part of the accused of mixing poisonous methyl spirit, death of as many as 31 persons was caused, as many as 266 persons suffered grievous injuries while 5 persons lost their eye sight completely. All the accused persons were, therefore, charged with the offences under Sections 302, 307, 326, 328, 201,120B read with Section 34 of the Indian Penal Code as also under Section 55 (a) (g) (h) and (i), Section 57A and Section 58 of Abkari Act. On the basis of this charge, evidence was led of about 270 witnesses. The accused persons abjured their guilt and claimed to be tried.

14. The sessions Judge categorized the accused persons in the following manner:

> "1) those who were involved in the manufacture of the illicit liquor;
>
> 2) those who were engaged in the distribution and transportation of the same;
>
> 3) Those who were mainly engaged in the sale of illicit liquor.

15. Accused Nos.13, 17, 31, 32, 37, 40, 43, 46, 27, 48 were found not guilty. They were straightaway acquitted. Some of the accused persons died during the trial. Those who were convicted by the Sessions Judge were awarded sentences depending upon the seriousness of the crime as per the classifications which have been shown above. Naturally, the persons in category (1) and category (2) were dealt with severely and most of them were awarded the maximum punishment of life imprisonment along with heavy fine. Those accused persons who were in category (3) were dealt with a little lightly in the sense that they were not given life imprisonment but imprisonment ranging from 3 years to 10 years was awarded to them. The convicted accused filed appeals before the High Court. The High Court also acquitted few of the accused persons and those whose appeals were dismissed have now come before

us by way of separate appeals which we have indicated in the first paragraph of this judgment. The High Court has considered the appeals filed by various accused before it separately. We also propose to do the same thing. We have to consider mainly the appeals filed by accused Nos. A-7, A-4, A-30, A-8 and Suresh Kumar (A-25) who filed SLP (Crl) 842 of 2006. Before we take up this task, we would analyze the impugned judgment of the High Court.

16. To begin with, the High Court, after quoting Sections 8, 55, 57A and 58 of the Kerala Abkari Act, proceeded to consider the entire evidence appeal-wise. In that, the High Court appreciated the evidence of the individual witnesses insofar as they were relevant to the particular accused whose appeal was being considered as also the documentary evidence as figured against that particular accused. Therefore, it so happened that sometimes the appreciation of evidence of common witnesses is repeated in the High Court's judgment but considering the large number of witnesses, more than 276 in all, that was inevitable. Still, it will be our endeavour to avoid the repetition while considering the matter at this stage.

17. These appeals are against the concurrent findings of fact and, therefore, it is obvious that this Court does not enter the area of re-appreciation of evidence. That can be done only in case the appreciation is substantially defective and the inferences drawn by the Courts below could not have been drawn in law. This Court has, time and again, declared that even where the Courts have acted upon inadmissible evidence or have left out of the consideration some material piece of evidence, the defence would be entitled to address this Court on those issues, and the Court would proceed to re-appreciate the evidence and re-examine the factual findings on that basis alone. We must, at this juncture, record that at least prima facie such is not the case here. On the other hand, we find that the evidence has been meticulously appreciated by both the Trial and the appellate Court. We also found no instance of inadmissible evidence having been accepted or some material evidence having been ignored by the Courts below. The arguments mostly related to the interpretation of the provisions of Abkari Act as also the provisions of the Indian Penal Code (IPC). The common feature of the arguments was that the Courts below have mis-interpreted the provisions of Abkari Act and, more particularly, of Section 57A (1) (i) and (ii) as also Section 57A (2) (ii). It has been again the common feature of arguments that the Courts below have erred in convicting the accused persons for offences under those Sections as the essential ingredients of those Sections were not proved by the prosecution as against the accused persons. It will be, therefore, proper to first examine the scope of Section 57A. However, such scope will have to be examined in the light of some other provisions of the Act as also the Statement of Objects and Reasons and the history of the Legislation. Suffice it to say, at this juncture, that the original nomenclature of the Act was Cochin Abkari Act, Act 1 of 1077 and Abkari Act (Travancore) 4 of 1073. These acts provided for the levy of fees for the licences for manufacture and sale of liquor and intoxicating drugs. Three acts were operating, they were Cochin Abkari Act, Travancore Abkari Act and Madras Abkari Act. Since that was causing difficulty, an Ordinance came to be promulgated on 01.05.1967. This was replaced by a Bill and that is how Abkari Act was born.

18. Section 2 (6A) of the Act defines `arrack'. It means any potable liquor other than toddy, beer, spirits of wine, wine, Indian made spirit, foreign liquor and any medicinal preparation containing alcohol. Section 2 (8) defines `toddy' to mean fermented or unfermented juice drawn from a coconut, palmyra, date or any other kind of palm tree. Section 2 (9) speaks about the `spirits' meaning any liquor containing alcohol and obtained by distillation. Sub-section (10) provides the definition of `liquor' which includes spirits of wine, arrack, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol. Section 2(12) defines country liquor which means toddy or arrack while Section 2(13) defines foreign liquor which includes all liquor other than country liquor. Thus, it will be seen that `liquor' is the broadest concept and engulfs all the intoxicating drinks. Section 6 prohibits import of liquor or intoxicating drug being imported without permission of the Government authorized to give permission in that behalf. Similarly, Section 7 prohibits the export of liquor or intoxicating drug. Section 8 is an important Section which speaks for the prohibition of manufacture, import, export, transport, transit, possession, storage and sale of arrack. The contravention of this Section is punishable with 10 years' imprisonment as also with fine of not less than Rs.1 lakh. Some other provisions relate to the various other prohibitions including the provisions for searches. Under Section 41A, the offence under this Act are made cognizable and non-bailable. Section 55 onwards provides for penalties under the Act for various offences. Section 55 speaks about the illegal import and is a general section which speaks about the effects of the contravention of the Act or rules or orders made thereunder relating to the import, export, manufacture of liquor tapping of toddy, drawing of toddy from any tree, construction of any distillery, brewery, winery or other manufactory in which liquor is manufactured, used, or possession of any materials, still, utensils, implements or apparatus etc. bottling of liquor for sale of liquor or any intoxicating drug. The punishment provided in this Section is 10 years' imprisonment with fine which shall not be less than Rs.1 lakh, excepting for clauses (d) and (e), where punishment is of one year imprisonment. This punishment has been brought in by way of an amendment by Act 16 of 1997 before which the punishment was merely two years and with fine of not less than Rs.20,000/-. There was a gruesome liquor tragedy in Earnakulam district in the year 1982 resulting in loss of eye-sight and physical incapacity in case of several persons and, therefore, severe penalties were provided for those who were responsible for adulteration of liquor and its sale. These punishments were made further stringent by the Amendment Act No.12 of 1995. In short, the stringency was introduced in order to check the sale of spurious liquor. The Statement of Objects and Reasons for Amendment Act 21 of 1984, 12 of 1995, 4 of 1996 and 16 of 1997 suggest the reasons why deterrent punishments were provided for the offence under the Act. Original Section 57 provided the punishment for adulteration by the licenced vendor or manufacturer. A new Section was added by Amendment Act No.21 of 1984 being Section 57A which is the most relevant section for our purpose. The Section reads as under:-

> "57A. For adulteration of liquor or intoxicating drug with noxious substances, etc.-(1) whoever mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings, with any liquor or intoxicating drug shall, on conviction, be punishable.

(i) if, as a result of such act, grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

(ii) if, as a result of such act, death is caused to any person, with death or imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

(iii) in any other case, with imprisonment for a term which shall not be less than one year, but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees. Explanation- for the purpose of this section and section 57B the expression `grievous hurt' shall have the same meaning as in section 320 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

(2) whoever omits to take reasonable precautions to prevent the mixing of any noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings, with any liquor or intoxicating drug shall, on conviction, punishable-

(i) if as a result of such omission, grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

(ii) if as a result of such omission, death is caused to any person, with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with the fine which may extend to fifty thousand rupees;

(iii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

(3) whoever possesses any liquor or intoxicating drug in which any substance referred to in sub-section (1) is mixed, knowing that such substance is mixed with such liquor or intoxicating drug shall, on conviction, be punishable with imprisonment for a term which shall not be less than one year but may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

(4) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no person accused or convicted of an offence under sub-section (1) or sub-section (3) shall, if in custody, be released on bail or on his own bond, unless -

(a) the prosecution has been given an opportunity to oppose the application for such release, and

(b) where the prosecution opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence. (5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872)-

(a) where a person is prosecuted for an offence under sub section (1) or sub-section (2) the burden of proving that he has not mixed or permitted to be mixed or, as the case may be, omitted to take reasonable precautions to prevent the mixing of, any substance referred to in that sub-section with any liquor or intoxicating drug shall be on him;

(b) where a person is prosecuted for an offence under sub-section (3) for being in possession of any liquor or intoxicating drug in which any substance referred to in sub-section (1) is mixed, the burden of proving that he did not know that such substance was mixed with such liquor or intoxicating drug shall be on him."

19. A plain reading of the Section would mean that now the offence is not limited to the licence holders, but refers to anybody who mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life with any liquor. The Section, therefore, is extremely general. In addition to the mixing or permitting to be mixed, sub-section (2) brings in the dragnet of the offence, a person who omits to take reasonable precaution to prevent the mixing of any noxious substance. It is significant to note that if, as a result of such act of mixing of the liquor with noxious or dangerous substance death is caused, the extreme penalty of death also is provided. Imprisonment provided is for a term not less than three years but which may extend to imprisonment for life as also with a fine of Rs.50,000/-. Similar such penalties provided in sub-section 2(ii) and sub-section 2(iii) are also relevant providing for residuary cases. Section 3 is the punishment for possession of any liquor or intoxicating drug which is mixed with noxious substance or dangerous drug knowing it to be so. Sub-section (4) prohibits the bail and the conditions for grant thereof. Sub-section (5) which is the most important section, puts the burden of proving that the accused has not mixed or permitted to be mixed or has not omitted to take reasonable precautions to prevent the mixing, is on the accused himself. Similarly, the burden would be on the accused to prove that while he was in possession of such liquor mixed with noxious or dangerous substance, he did not know that such substance was mixed with such liquor. Section 58 speaks for the possession of illicit liquor. At this juncture, we need not go to the other offences of the Indian Penal Code like murder, attempt to murder etc. In this case, the charge is predominantly under Sections 55 (a), (g), (h), (i) 57A and 58 of the Abkari Act.

20. Since the burden to prove the offence which normally lies on the prosecution under the criminal jurisprudence was shifted to the accused, it was but natural that the constitutional validity of the Section came to be challenged. However, in P.N. Krishna Lal & Ors. v. Govt. of Kerala & Anr. reported in 1995 Suppl. (2) SCC 187, this Court proceeded to uphold the same. While upholding the constitutional validity, the Court has in detail explained the mode of proof by prosecution and the extent of burden of proof which lies on the accused. The challenge which was made to the validity of the Section was on the basis of the Universal

Declaration of Human Rights (UDHR) and the International Convention for Civil and Political Rights (ICCPR), to which India is a member which guarantee fundamental freedom and liberty to the accused. It was suggested that in criminal jurisprudence it was settled law that it was on the prosecution to prove all the ingredients of the offence with which the accused has been charged. It was suggested that Sub-section (5) relieves the prosecution of its duty to prove its case beyond reasonable doubt which is incumbent under the Code and the Evidence Act and makes the accused to disprove the prosecution case. Thereby, the substantive provisions and the burden of proof not only violate the fundamental human rights but, also fundamental rights under Articles 20(3) and 14. The provision was criticized as arbitrary, unjust and unfair and infringing upon the right to life and unjust procedure violating the guarantee under Article 21 also. The provision was also criticized as providing unconscionable procedure. It was further suggested that though Sections 299 and 300 of IPC make a distinction between culpable homicide and murder but the Amendment Act has done away with this salutary distinction and mere death of a person by consumption of adulterated arrack, makes the offender liable for conviction and imprisonment for life or penalty of death. It was further suggested that mere negligence in taking reasonable precaution to prevent mixing of noxious substance or any other substance with arrack or Indian made foreign liquor or intoxicating foreign drug was made punishable with minimum sentence was harsh, unjust and excessive punishment offending Articles 14 and 21 of the Constitution of India. Section 58B which was also challenged was severally criticized as being unfair and unjust. It was further suggested that presumption envisaged in sub-section (5) of section 57-A per se violated the fundamental rights and the Universal Declaration. It was further criticized that mere possession of adulterated liquor without any intent to sell, to become a presumptive evidence to impose punishment without the prosecution proving that the person in possession was not a bona fide consumer or had its possession without animus to sell for consumption and place the burden on the accused to prove his innocence is procedure, which is unjust and oppressive violating the cardinal principles of proof of crime beyond reasonable doubt. The Section was also criticized for the excess of proportionality for imposition of sentence. Further the Section was criticized on the ground that compelling the accused to state the facts constituting offence under Section 57A by operation of sub-section (5) was opposed to mandate of Article 20 (3) amounted to and compelled him to be a witness to prove his innocence. While commenting on Article 20 (3), this Court referred to R.C. Cooper v. Union of India reported as 1970 (1) SCC 248 as also Kartar Singh v. State of Punjab [(1994) 3 SCC 569] where it was held that freedom could not last long unless it was coupled with order, freedom can never exist without order and both freedom and order may co-exist. It was observed that Liberty must be controlled in the interest of the society but the social interest must never be overbearing to justify total deprivation of individual liberty. It was then stated that liberty would not always be an absolute licence but must arm itself within the confines of law, In other words, there can be no liberty without social restraint. The Court also observed that the liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number. The Court observed that common happiness is an end of the society, lest lawlessness and anarchy should tamper social wheel and harmony and powerful courses or forces would be at work to undermine social welfare and order. The Court then observed in paragraph 24 as under: "The State has the power to prohibit trade or business which are illegal, immoral or injurious to the health and welfare of the people. No one has

the right to carry on any trade or occupation or business which is inherently vicious and pernicious and is condemned by all civilized societies. Equally no one could claim entitlement to carry on any trade or business or any activities which are criminal and immoral or in any articles of goods which are obnoxious and injurious to the safety and health of general public. There is no inherent right in crime. Prohibition of trade or business of noxious or dangerous substance or goods, by law is in the interest of social welfare."

21. Coming to the burden of proof, the Court observed that though in civilized criminal jurisprudence the accused is presumed to be innocent unless he is found guilty and though the burden of proof always is on the prosecution to prove the offence beyond reasonable doubt yet the rule gets modulated with the march of time. The Court referred to the absolute right of the state to regulate production, transport, storage, possession and sale of liquor or intoxicating drug and held that the accused did not have the absolute right to business or trade of liquor. The Court also referred to the prohibitions regarding mixing of noxious substance with liquor or possession thereof and further held that the State possessed the right to complete control on all kinds of intoxicants. The Court found that the regulation of sale of potable liquor prevents reckless propensity for adulterating liquor to make easy gain at the cost of health and precious life of consumer. The Court also noted the object of the Amendment Act which was to prevent recurrence of large scale deaths or grievous hurt to the consumers of adulterated liquor mixed with noxious substance. Referring to a judgment reported as Salabiaku v. Grance [1988] 13 EHRR 379, the Court observed that the national legislature would be free to strip the Trial Court of any genuine power of assessment and deprive the presumption of innocence of its substance, if the words 'according to law' were construed exclusively with reference to domestic law. It was held in that case that Article 6 (2) of the Universal Declaration of Human Rights did not refer to presumption of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of that is at stake and maintain the rights of the defence. Providing exceptions or to place partial burden on the accused was not violative of universal declaration of human rights or even Convention on Civil or Political Rights. The Court then referred to the reported decisions in UK, Hong Kong, Malaysia, USA, Australia and Canada to find the permissible limits of burden of proof of the accused. The Court referred to the decisions in Woolmington v. Director of Public Prosecutions, (1935) A.C. 462; Mancini v. Director of Public Prosecutions, (1942) A.C. 1; Reg. v. Edwards [1975] Q.B. 27; Ong Ah Chuan v. Public Prosecutor, (1981) A.C. 648; Queen v. Oakes, 26 D.L.R, (4th) 200; Ed Tumey v. State of Ohio, (71) L.Ed. 749; Morrison v. California, 78 Law. Ed.664; United States v. Gainey, 13, Law. Ed. 2nd. p. 658; Barnes v. United States, 412 US 837; In County Court of Ulster, New York v. Samuel Allen, 442 US 140; Herman Solem v. Jerry Buckley Helm, 463 US 277; Timothy F. Leary v. U.S., 395 US 6, which were the foreign Court judgments to the issue of burden of proof. The Court also referred to Sections 5, 6, 101, 105 and 106 as also to Sections 113A and 114A of the Indian Evidence Act and relied on the observations made in Shambu Nath Mehra v. State of Ajmer, [1956] SCR 199. Further the Court also referred to C.S.D. Swamy v. The State, [1960] 1 SCR 461 and commented on the presumptions raised under the Prevention of Corruption Act. The Court observed in para 39 as under: "39.It is the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the

prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt. At no stage of the prosecution case, the burden to disprove the fact would rest on the defence. However, exceptions have been provided in sections 105 and 106 of the Evidence Act, as stated hereinbefore. Section 113-A of the Evidence Act raises a presumption as to abatement of suicide by a married woman by her husband or his relatives. Similarly section 114-A raises presumption of absence of consent in a rape case. Several statutes also provided evidential burden on the accused. On the general question of the burden of proof of facts within special knowledge of the accused, this Court, in Shambu Nath Mehra v. State of Ajmer, [1956] SCR 199, laid the rule thus :-

> "Section 106 of the Evidence Act does not abrogate the well-established rule of criminal law that except in very exceptional classes of cases the burden that lies on the prosecution to prove its case never shifts and section 106 is not intended to relieve the prosecution of that burden. On the contrary, it seeks to meet certain exceptional cases where it is impossible, or a proportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which can be proved by him without difficulty or inconvenience."

The Court further observed in para 46:

> "46. It is thus settled law even under general criminal jurisprudence that sections 105 and 106 of the Evidence Act place a part of the burden of proof on the accused to prove facts which are within his knowledge when the prosecution establishes the ingredients of the offence charged, the burden shifts on to the accused to prove certain facts within his knowledge or exceptions to which he is entitled to. Based upon the language in the statute the burden of proof varies. However, the test of proof of preponderance of probabilities is the extended criminal jurisprudence and the burden of proof is not as heavy as on the prosecution. Once the accused succeeds in showing, by preponderance of probabilities that there is reasonable doubt in his favour, the burden shifts again on to the prosecution to prove the case against the accused beyond reasonable doubt, if the accused has to be convicted. From this conceptual criminal jurisprudence, question emerges whether sub-section (5) placing the burden on the accused of the facts stated therein would offend Articles 20(3), 21 and 14 of the Constitution."
>
> (emphasis supplied)

Further in paragraph 52, the Court observed and quoted: "52.The question of intention bears no relevance to an offence under section 57-A and equally of culpability or negligence. It is seen that mixing or permitting to mix noxious substance or any other substance with liquor or intoxicated drug or omission to take reasonable precaution or being in possession without knowledge of its adulteration for the purpose of unjust enrichment would be without any regard for loss of precious human lives or grievous hurt. The legislature has noted the inadequacy and deficiency in the existing law to meet the menace of adulteration of liquor

etc. and provided for new offences and directed with mandatory language protection of the health and precious lives of innocent consumers. While interpreting the law, the court must be cognizant to the purpose of the law and respect the legislative animation and effectuate the law for social welfare. The legislature enacted deterrent social provisions to combat the degradation of human conduct. These special provisions are to some extent harsh and are a departure from normal criminal jurisprudence. But it is not uncommon in criminal statutes. It is a special mode to tackle new situations created by human proclivity to amass wealth at the alter of human lives. So it is not right to read down the law."

22. Ultimately, in paragraph 53 the Court noted the object of the Amendment Act which was to put down the menace of adulteration of arrack etc. by prescribing deterrent sentences. It held that the statute cannot be struck down on hypothesized individual case. It also noted that under the Code, the accused has the opportunity before imposing sentence to adduce evidence even on sentence and has an opportunity to plead any mitigating circumstance in his favour and it would be for the trial judge to consider on the facts situation in each case the sentence to be imposed. It held that all the accused are to be treated as a class and there was reasonable nexus between the offence created and the case to be dealt with, the procedure, presumption and burden of proof placed on the accused, are not unjust, unfair or unreasonable offending Articles 21 and 14. It also held that the provisions did not violate Article 20 (3) of the Constitution and thus Sections 57A and 57B were held to be valid.

23. In this locus classicus this Court has described complete scope of section 57A as a whole with special reference to Section 57A (5). It is in this backdrop of this exposition of law that the Courts below were expected to decide upon the criminality of the accused involved. It will now, therefore, be our task to see whether the parameters fixed by this Court in the aforementioned judgment have been scrupulously followed by the Courts below. Our answer to this vexed question is in the affirmative.

24. Accused No.7 He appears to be the boss who was running this illegal business of liquor along with his family members including accused Nos.A-4 and A-8 and even their wives were not left behind which is clear from the fact that they were arrayed as accused along with others but could not be brought to book as they were absconding and hence their cases were separated. It appears to be an admitted position that shop Nos. 1 to 26 meant for selling toddy were being managed by this accused. He had the licence for running those toddy shops in Chirayinkil Range. He had obtained them in the auction using his own money. The shops were obtained in the name of his wife who was accused No.18 and also a relative being accused No.19. This auction was held for the year 2000-01, in March, 2000. It was only at that time that he realized that he had paid Rs.4 crores which may not be possible for him to recover if he sold only toddy through these 26 outlets. The prosecution case is that, therefore, he started procuring illicit ethyl alcohol and for that purpose accused No.4 and other accused being A-12, A-13, and A-48 helped him. The prosecution alleged that methyl alcohol used to be purchased by A-17 outside the state of Kerala and used to be supplied to A16 who delivered it to the godown at Pandaksala bearing door No. VI/98 of Chirayinkil Panchayat. Pandaksala was, in one sense, a factory for the production of the spurious liquor as per the prosecution case. There is no dispute that Pandaksala godown was owned and controlled

completely by A-7. The prosecution alleged against him that A-7 was doing the business in liquor in the name of a firm called Ushus Traders. His wife's name is Usha and her younger sister's name is Ambili and it was alleged by the prosecution that his wife's brother Raju also helped him in his business. There was a large organization which becomes clear from the fact that his premises were raided by the Income Tax Department on 14.10.1999. PW-127, A. Mohan is the deputy Director of Income Tax who conducted the raid along with others. Sworn statements were recorded from A-7 as also the original accused No.15 on that day. Prosecution proved some documents relating to this raid vide Exhibits P- 335, 336, 337 and 338. The statement of A-7 was marked as Exhibit P-339 while that of A-15 as Exhibit P-340. Statements of others were also recorded they being Exhibits P-341, 342 and 343. From these statements and from the documents, it became clear that a full-fledged business in illicit liquor was going on. Accounts were contained in Exhibit P-335 and P-336. A bunch of duplicate stickers was also found vide Exhibit P-338. They were of Kerala State Bewerage Corporation allegedly signed by the Excise Commissioner. It came in light that they used to sell arrack in 150 litre cover indicated in the accounts as letters PKT or P2 while toddy used to be mixed with spirit that was indicated as Spl. The more potent brand which was by adding spirit to toddy was named as KP. The spirit which was brought, of course, illegally was indicated as SBT. Sale of arrack in retail was indicated by MN. The accounts also indicated the packets given to the salesmen for sale, illegal gratification given to excise, police, politicians in code language. The High Court has rightly held that this could not bring to light the offence under Section 57A. However, the High Court had held that this went on to suggest that there was a huge business going on in liquor and at times by mixing toddy with ethyl alcohol.

25. High Court had considered the properties owned by A-7. Shri Radhakrishnan, learned Senior counsel appearing on behalf of A-7 did not seriously dispute these findings. It is an admitted position that the outhouse of A-7 to the building numbered as door No.XIII/656 bearing door No.IV/1248 and a house bearing door No.XIII/655 were owned by this accused. PW-270, K.K. Joswa, conducted a search in the outhouse vide Exhibit P134 and found two tanks of 5 thousand litres capacity in the underground cellar of the North-Eastern corner of the building. These tanks were fitted with PVC pipes for the purpose of filling and emptying the same. The sample collected from the tanks for chemical analysis showed that it was ethyl alcohol. In a raid by PW-249, Rajan John who was the Circle Inspector of Police, Kadakkavoor, broken parts of four synthetic tanks of 5 thousand capacity were found as also the tanks of one thousand litres and synthetic tank of 5 thousand litres were found and seized. They were buried in the South-Eastern portion of the building. Multi- pack machine with two keys was found concealed in the Northern-Eastern part of the building. PVC pipe connection was seen going to the property of A-7. The High Court has referred to the oral evidence and has also referred to number of documents to show that several buildings were owned, possessed and controlled by A-7 and his wife wherefrom A-7 conducted his liquor business. Shri Radhakrishnan did not seriously contradict this finding of the High Court.

26. When the factory of A-7 was searched by PW- 270,K.K.Joswa on 18.11.2000 vide Exhibit P106 he detected underground cellar with 18 synthetic tanks of 5 thousand capacity each arranged in two rows of nine each containing illicit liquor. It is found that all these tanks

had 48,600 of liquor. PW-71, C. Rajan was a plumber who made meticulous arrangement and pipe connection from these synthetic tanks. All this shows the huge volume of business of A-7.

27. The High court has further held that the toddy business was carried on in the building where firm Ushus Traders was operating. The toddy godown was just behind the Ushus office in building bearing No.CP III/580. The said godown was a licenced one for conducting toddy shop Nos.1 to 26 of Chirayinkil village. Two hidden tanks were found vide M.Os 63 and 64 and it is here that the liquor activities connected with business were going on. The High Court has held that the registered owners Chellamma and Sahadevan were not in the possession of premises. In this search, one tank of 5 thousand litres capacity, two tanks of 1 thousand capacity and one tank of 2 thousand capacity were seized. So also from these premises the vehicles with fake numbers, they being M.O. Nos. 83, 84, 85 and 86 were seized from these premises. The High Court also referred to analysis of cotton swabs collected from this place which showed that there was methyl alcohol. Still another property of 19.5 cents shown as Arayathuruthu was also found being owned by Raju who was brother of A-18. This property was also used by A-7 to destroy the evidence by burning plastic cans and other items. Still another property in village Sarkara was used by A-7 for illicit business which was clear from the documents seized by PW-256, P.K. Kuttappan in the presence of PW-119, Asheraf. The High Court also made reference to other properties which were used by A-7 for the purpose of illicit business, which properties belonged to mother-in-law of A-7. The High Court rightly came to the conclusion that it was A-7 who was controlling the whole affair. It is significant that when trace evidence was collected from the vehicles seized from the areas, in some of the items methyl alcohol was detected.

28. It is not as if methyl alcohol was restricted only to the above mentioned premises. However, from the evidence of PW-256 it has come out that some plastic cans were also found in the search conducted by him in Thundathhil Purayidom which was in possession of accused No.7. The chemical analysis of the contents of those cans showed that methyl alcohol was detected in four items. In the toddy godown of A-7 from Vanchiyurkadavilla these vehicles were seen abandoned and from a Maruti car having registration No. PYOIN 463 methyl alcohol was detected in the samples taken. Methyl alcohol was also detected from the mini lorry bearing registration No.KL 01 843 belonging to A-7. Some other vehicles were belonging to A-4 who was none else but the brother of A-7 and in those vehicles also methyl alcohol was detected. The High Court has noted the further argument that the detection of methyl alcohol from the trace evidence was not possible. However, it has further observed that PW-233, Sindhu, Assistant Director, Forensic Sciences very clearly deposed that even if there is evaporation, even after 10 days, it is possible to detect the absorbed molecules of a liquid. It was, therefore, clear from her evidence that the scientific evidence collected by the prosecution was rightly relied upon by the Courts below and we also find no reason to reject that evidence. Therefore, it is clear that methyl alcohol which was the main culprit, was not only a dangerously poisonous substance but was also used in mixing the liquor which was under the control of A-7 who was being helped by his brothers, servants and relatives. We will consider separately the evidence against A-4 and A-8 who were the brothers of A-7. However, one thing was certain that this was a huge well-oiled

machinery for running the liquor business and the enormousness is mind-boggling. All this suggests that A-7 was the captain of the whole team.

29. The High Court has also commented on the evidence of PW-61, Dennis A. and PW-57, Thulasidar and has also referred to the evidence of officers of BSNL, Escotel and BPL for the use of land phones and mobile phones and conversation in between A-7 and A-4 as also the others including the servants and relatives. The High Court has then proceeded to believe the evidence that the cans which were having the illicit liquor duly mixed with methyl alcohol were removed from the godown and for this purpose has relied upon the evidence of C. Somarajan (PW-79), the cashier of the petrol pump as also the evidence of PW-76, Anfar, the auto rickshaw driver who had seen the vehicles which were used for removing the liquor.

30. The reason why accused No.7 had to mix the methyl alcohol and/or methynol is not far to see. It is clarified from the evidence of PW-96, V. Ajith Kumar that A-7 had put the bid of Rs. 4 crores for the 26 toddy shops and even if all the toddy shops had worked in their full capacity he could not have recovered even half the amount and it was, therefore, that this idea of bringing ethyl alcohol, mixing it with methyl alcohol and creating various drinks like Kalapani etc. was mooted. The result thereof was for all to see which resulted in death of 31 persons. The High Court has correctly observed that the basic reason for bidding for 26 shops for toddy was to get the legitimate godown for toddy. It is proved that those godowns, instead, were used not for storing toddy but for storing ethyl alcohol and mixing it with methyl alcohol for making enormous profits. It is not as if A-7 was selling only toddy. In addition to that he was creating various drinks preferably by mixing ethyl alcohol with methyl alcohol. Thus, there was a full liquor industry going on under his captainship.

31. The last nail in the coffin is the evidence of PW- 53, Sunil. We have very carefully gone through his evidence and the High Court has also extensively dealt with his evidence. PW-53 is a close relative of A-7 and worked in the godown from March, 2000. Before that he was supplying spirit to A-7 from various places. He has graphically described in his evidence as to how the spirit business was being done inasmuch as he deposed that the spirit used to be brought from the tankers and used to be collected in the syntex tanks and was filled in 35 litres cans. This spirit was used for making a drink called Kalapani by mixing with essence and some toddy. It was then filled in the cans and dispatched in the vehicles. The evidence of this witness further goes on to show the position of godown which was used for the storage of ethyl alcohol and methyl alcohol. He referred to methyl alcohol as `essence'. He described that the spirit was brought from Karnataka and essence used to come on Thursdays in a white Fiat car. The Fiat car had a secrete chamber. That car was identified as M.O.-24. The tank and the platform were built in the back seat and the front seat of the car. There were three valves attached to the same and 35 litres of methyl alcohol i.e. the essence could be carried in the said car. He gave a graphic description of mixture with spirit which ultimately was sold. He specifically named A-20, A-22, A-23 and A-21 who were supervising the mixing. In his evidence he has also specifically referred that he had seen M.O.-24, the car, importing the essence i.e. the methyl alcohol precisely two days prior to the liquor tragedy. He has also named A-16 and another boy who were the occupants of the said car. He also suggested that he and the other employees were filling up the essence in 10 cans. The High Court has

referred to the further evidence on the part of this witness that in the night at about 10.30 p.m. the tanker lorry came with spirit and the said spirit was filled in the syntex tank and cans. Those half filled cans were then filled with the methyl alcohol meaning thereby it was mixed. He then went on to depose that the employees of A-4, namely, A-5, A-6, A-9 and A-10 came there with three vehicles and essence and they mixed up the essence with the spirit. He claimed that in all 60 cans were filled up and were dispatched in three cars for transporting to various places for sale. According to him he came to know about the Kalluvathaukkal tragedy on 21.10.2000. On that day at about 7.30 p.m. A-7 and 15 came and slapped Vijayan for not properly mixing and A-7 then left the place telling them to destroy the evidence. According to him, thereafter, what was left in the syntex tank was poured in the river, un-used cans were removed and plastic covers were disposed of by setting fire. A-7 had also taken adequate care to send away the employees for sometime and it was through him that the witness came to know that people had died by drinking the spirit supplied by A-4 and his employees due to a mistake in mixing by A-20 and A-22.

32. Shri Radhakrishnan, learned Senior Counsel very seriously argued that even if the evidence of this witness is entirely accepted, it does not suggest that A-7 himself mixed the methyl alcohol with the spirit and, therefore, there could be no question of his being booked under Section 57A of the Abkari Act. We have already explained the real scope of Section 57A. For being convicted under that Section, it is not necessary that the person concerned must himself do the mixing. It is obvious that A-7 was the boss. In fact PW-53 describes him as the boss. It is, therefore, obvious that everything was done as per his command and if it was so, then in order to be convicted under Section 57A, the prosecution is not required to prove that A-7 physically mixed the methyl alcohol or the injurious substance with the spirit. In our opinion, even if A-7 commanded his servants to mix up, he is equally guilty under the Section. In fact illegally importing ethyl alcohol and mixing the same with methanol was a regular trading activity on the part of A-7. The licences for running the toddy shops was merely a facade. He had undoubtedly put a very tall bid for those licences and could not have afforded to continue merely on the basis of those 26 toddy shops. The High Court has rightly referred to that part and we approve of the High Court's findings in that behalf. Therefore, he gave his business a complete new turn, that is, instead of selling toddy through those outlets he started selling alcoholic drink prepared from ethyl alcohol and methanol and that illegally imported both and all this was going on with the corrupt cooperation of those who could have checked it. Therefore, it is a proved position from the evidence of PW-53 that A-7 was the boss of the illegal trade. He got the methanol imported and used his godown which he rightfully possessed on account of his licences for 26 shops. Therefore, his knowledge that methanol was being mixed, the fact that he was running the business along with his hirelings and the further fact that he used to be present at the time of the mixing are properly proved by the prosecution with the aid of testimony of PW-53 and are enough for a finding about Section 57A (1) (ii).

33. PW-53 very specifically deposed that on 19.10.2000 around midnight mixing was done by A-20, 21, 22 and 23 and that methanol was brought by A-16 in the Fiat car with secrete chambers and ethyl alcohol was brought by PW-48, K. Sivaram in a truck to the Pandaksala godown. There can be no doubt that PW-53 was present there and had seen this. Shri

Radhakrishnan tried to take advantage of this evidence suggesting that it was A-20 to 23 who were actually mixing methanol which was delivered by the workers of A-4 from the godown in the very same night. From this, Shri Radhakrishnan tried to argue that it was not actually mixed by A-7. It was clear that this mixing took place at Pandaksala godown owned by A-7. Shri Radhakrishnan also pointed out that the High Court had held that the accused No.7 was liable to be convicted for offence under Section 57A (1) (ii). It was also pointed out by him that the High Court had observed that he could not be convicted under Section 57A (1) (i) and (iii). In short, the contention is that since according to the evidence of PW-53, A-7 had not himself mixed or did not permit to be mixed noxious substance endangering the human life with any liquor or intoxicating drug A-7 could not be convicted for the offence under Section 57 A 1 (ii) also.

34. The argument is clearly fallacious. We have already pointed out that it was not necessary that A-7 had physically mixed the methyl alcohol for his being convicted. It was actually done on his command and within his knowlege. His offence could also come within the definition on account of the other words of the Section `or permits to be mixed'. While interpreting these words, namely, `whoever mixes or permits to be mixed' the real import of the words would have to be taken into consideration and thereby if A-7 directed his servants to mix methanol with methyl alcohol that would also be covered within the scope of the words `mixes or permits to be mixed' in the Section. It has already come in the evidence that all this mixing was done at the instance of, with the direction of and to the knowledge of the accused No.7. He was the king pin or the main actor on whom the huge business of liquor trade rested. It cannot, therefore, be said that the conviction under section 57A (1) (ii) was in any manner incorrect. Of course that would be only and only if the evidence of PW-53 along with other relevant witnesses held to be reliable.

35. There is no reason for us to discard the testimony of PW-53 which was read word to word before us by Shri Radhakrishnan. We find that the evidence was most natural and was not shaken in any manner in his cross- examination. He has given a complete graphic description of what happened. He claimed that he was working with A-7 from March, 2000 in the godown and before that he used to supply spirit in different places for A-7. He gave the names of persons working in the Pandaksala godown. He referred to methanol as `essence' and pointed out that essence was added to the spirit collected in syntax tank to make Kalapani and then it used to be filled in the plastic vessels having capacity of 35 litres. He pointed out that the spirit was poured in the small syntax tanks and little toddy, water, powder etc. were mixed and essence used to be added to it and that substance and then it used to be filled in the bottles. He gave graphically the details of the operations and also deposed that apart from the 26 toddy shops, his boss was running 75 shops without licences and it was a small scale industry. He asserted that it is only the things supplied by the boss which are sold in those shops. He asserted that when the essence was mixed in the spirit the vitality would increase. He also described the role of Anil Kumar (A-16) who used to bring essence and come only on certain days in month mostly on Thursdays. He also described the Fiat car and the secret tank and pointed out that the essence brought therein used to be filled in plastic vessels having capacity of 35 litres through hose and by using hand motor and essence used to be added to the spirit in the tank and then the concoction used to be supplied

for sale. He spoke about the night when the whole operation took place and involved A-4, A-22 and A-21. He pointed out that alcohol came in the tanker at night. The concoction was prepared by accused Vijayan, Suresh, Monkuttan and Rasool. Three cars came thereafter being white Maruti Van, red Maruti car and Blue Maruti car. After mixing, the cars were sent of. The said material was taken to the dealers of A-7. He has also spoken as to what happened on 21.10.2000 when accused Balachandran and A-7 came and A-7 gave a beating to Vijayan asking him as to how mixing was not properly done. He then directed the whole remaining material to be poured into the river and to destroy the cans. Accordingly, as per the direction, the concoction in the Syntex tank was poured in the river and the cans and the covers were burnt and buried under the sand. He pointed out that the essence mixed spirit was taken to the shed belonging to A-7 Attukadavu. He spoke about the electronic machine, hand machine and the process of filling the concoction in the plastic cans. He pointed out that on that day all the plastic covers were burnt by them. A-7 had also directed the witness and the other servants to remain absconding. In his cross-examination, he not only identified A-7 but called him Boss and Annan, elder brother. Some irrelevant questions were put to him which he answered suggesting that the property belonged to A-7 and the godown also belonged to him and the mixing used to be done there only.

36. We have seen the whole evidence very carefully. Though he was subjected to lengthy cross-examination, the main story about the mixing has not suffered any dent. On the other hand, the operation of mixing was explained again in the cross-examination. He owned up that he himself carried Kalapani on number of occasions to the various shops of A-7. The evidence given by this witness sounds truthful because he has not tried to justify himself nor has he made any efforts to save himself. Most of the cross-examination was stereotyped, limiting to the minor omissions in his statement under Section 161 and 164 Cr.P.C. Even at the instance of the other accused persons, nothing much has come about in his cross-examination. In his cross-examination by A-4, he again explained the role of Anil Kumar who brought methanol and asserted the role played by A-4. In the cross-examination by A-5, A-6, and A-1 also merely some omissions were brought which were insignificant. However, considering the whole evidence, this witness is creditworthy.

37. Shri Radhakrishnan, however, pointed out that the evidence of this witness is in the nature of evidence of an accomplice and has to be red in the light of Section 133 and Section 114B of the Indian Evidence Act and that he also reiterated the settled principles that an accomplice must be tested with respect to his reliability and if he is unreliable his evidence cannot be the basis of the prosecution case. Learned counsel further argued that if the witness is found reliable then his evidence must be corroborated in material particulars. Learned senior counsel relied on Shankar @ Gauri Shankar v. State of Tamil Nadu [1994 (4) SCC 478] as also Rampal Pithwa Rahidas v.State of Maharashtra (1994) Suppl. (2) SCC 73, more particularly, in paragraphs 14 and 15 in the previous case and paragraph 9 in the latter case.

38. Shri Radhakrishnan further argued that the witness had stated that he was in good terms with A-7 and that he did not quarrel with A-7. This was suggested as a strange conduct. He also pointed out that the witness had stated that he had acted under the instructions of his boss. It is seen from the evidence that he was a minion of his boss i.e. A-7 and he answered

that he gave all the answers to the police as per the instructions given to him by A-7 there is nothing unnatural in it. He was a very small fry as compared to a mighty businessman like A-7 and it was suggested by Shri Radhakrishnan that his evidence did suggest that his behaviour was strange. Shri Radhakrishnan insisted that this witness was insisting that he had good relations with A-7 and yet he deposed against A-7 and this, amounted to strange behaviour. Under the peculiar circumstances of this case considering the position of this witness vis-`-vis A-7, we do not think that this amounts to a very strange behaviour on account of which this witness should be stamped with as an unreliable witness. Shri Radhakrishnan pointed out that PW-53 was under the tutelage of the police from 20th November and was tutored by the police. His Section 164 statement seems to have been recorded on 15th January and Section 161 statement was prior to that. Shri Radhakrishnan pointed out that both his statements were clubbed together and there he himself admitted having committed the offence under the Abkari Act. Shri Radhakrishanam, therefore, argued that the police should have arrested him but the police neither arrested him nor included him in the array of accused. Instead the prosecution planted him as a prosecution witness. In that the learned counsel further argued that the prosecution did not also resort to the procedure under section 306 for claiming pardon for the witness nor did not prosecution join him later on as an accused under section 319 of the Cr.P.C. The learned counsel further argued that the police were very soft towards PW-53 who was an accused in two Abkari cases. He was also immediately granted bail in those cases and, therefore, the prosecution had acted it in an unfair manner. Learned senior counsel also suggested that PW-53 was on inimical terms towards A-7 and, therefore, his evidence would have to be evaluated with caution. Shri Radhakrishnan also urged that there were number of prevarications, inconsistencies, discrepancies, improvements and omissions in the testimony of PW-53 which were highlighted by the learned counsel. Ultimately it was argued that his evidence was even not materially corroborated.

39. Learned counsel also argued that the evidence of PW-53 could not materially prove ingredients of offence, namely, mixes or permits to be mixes, under section 57A (1) (i) at Pandaksala godown. Sudheer, PW-60 was described as a planted witness while Dennis A.(PW-61) was said to be a chance witness. It was also argued that at the most A-7 could have been convicted under section 55 (a) (g) (h) (i) and 58 of the Abkari Act as it was not proved that he had mixed or permitted to mix methanol with ethyl alcohol for selling the same in the market. Shri Radhakrishnan also argued that though the burden of proof under Section 57A (5) was on the accused, the prosecution has miserably failed to project the case of Section57A (1) (i) and (ii) and the accused has discharged his burden under Section 55 by adverting to the evidence in the case in hand.

40. Lastly, it was pointed that there was no question of any conspiracy and even if there was any conspiracy all the links in the conspiracy were snapped by A-13, 14 and 48. It was pointed out that in fact it was A-17 who had placed the order for methanol with the chemical company and entrusted the two barrels of methanol to A- 16 to import the same to Kerala. However, A-17 stood acquitted. So also A-12, 13, 143 and 48 who were alleged to have brought ethyl alcohol for mixing were also acquitted. Therefore, it was suggested that no

ethyl alcohol was brought at all and the methanol was also not mixed much less at the instance of A-7.

41. Before we consider the other contentions which we have referred to in the earlier paragraphs, we must first consider the argument of Shri Radhakrishnan regarding PW-53 being an accomplice and the so-called unfairness on the part of prosecution in not prosecuting him or not proceeding under section 306 Cr.P.C. The learned Counsel was vociferous in further suggesting that the evidence of this witness firstly is not reliable as it is not corroborated in material particulars as required under section 133 and 114 B of the Indian Evidence Act. We have already pointed out that his evidence was generally found to be reliable as there is very little in his cross-examination which will destroy his testimony or would even affect it in any manner. In fact it was not our task, in the Supreme Court to re-appreciate the evidence, particularly, when both the Courts below have not only appreciated it but have accepted the same after thoroughly discussing the intricacies and the small little details of his evidence. However, we have done that exercise in the light of the contention raised that this witness was not reliable and was not corroborated in material particulars. In fact there are very weighty corroborations to the evidence of this witness. We must refer to the evidence of PW-60, Sudheer who is the driver. He deposed that he got acquainted with A-16, Anil Kumar and he assured him of a job. It was at his instance that he went to Husur and he was engaged to drive the Fiat car which was to collect some material from there to Chirayinkeezhu. He thus, went to Chirayankeezhu in the car having registration No. TMY 8746. He referred to the secret chamber in that car and through his conversation with A-16, he also came to know that the material that he was carrying in the secret chamber was poison. He referred to the godown of A-7 which was 6-7 Kms. away from Atitingal Junction. He also met A-7 and said that he used to pay the price of the stuff and in his absence, Manikantan @ Kochani (A-4) used to make the payment. He referred to the last Thursday when claimed that he had brought the stuff to Chirayinkeezhu and came to know about the liquor tragedy on Sunday when he was in Husur. He has deposed that the stuff which he brought on Thursday in the car was unloaded in A-7's godown and on that day A-7's workers were there. This evidence is in complete corroboration of the evidence of PW-53 in whose presence the car was brought by A-16, Anil Kumar. He described that the stuff which was purchased used to be filled in the secret chambers of the car and after the tragedy, he was also told by A-16 to leave the place. The witness had also identified A-7 and A-16 as also A-4, Kochani. He also identified the Fiat car. It is to be noted that when the samples were taken from this car, it was positive for methanol. Shri Radhakrishnan also did not contest this position. Most of his cross-examination is irrelevant. Some irrelevant and inadmissible questions were also put to him in the cross-examination in relation to his statement to the police. It was tried to be suggested that the stuff that he had brought in that car was not methanol or poison. However, his evidence on the whole establishes that he had met Anil Kumar and was working for him. Apart from A-7, there was cross-examination at the instance of A-17, A-16 and A-4. There will be no question about A-17 since he has already been acquitted. However, we do not find anything suspicious in the evidence of this witness even in his cross-examination of A-16 and A-4. This witness has been believed by the Trial Court and the appellate Court and, in our opinion, the evidence of this witness provides complete corroboration to the evidence of PW-53. This is apart from the fact that there is

another piece of evidence which corroborates the evidence of PW- 53 which is to be found in the evidence of K. K. Joshua, PW-270. The description given by the Investigating Officer, K.K. Joshua on his searches of the places and, more particularly, of the places as described by PW-53 completely tallies. These are also material particulars which would lend support to the testimony of PW-53. Shri Joshua has given the graphic description of all the places where the activity of mixing used to go on. He has also spoken about all the six vehicles found on the spot and some of which were with fake registration number. He has spoken about the search at Tabuk Industries where a black can having capacity of 10 litres was found and on eastern side of that building there was a platform build and near it pump sets and hoses were also kept. He has referred to the liquid which was collected. He has also spoken about the synthetic tank having capacity of five thousand litres which was kept on the platform. He has also referred to the synthetic tank with spirit found there. He had taken samples D-1 to D-18 which were ultimately found with ethyl alcohol. He had also searched the toddy godown in Ushus building which was on the southern side of Ushus building at Pandaksala. He has also spoken about the Pattarumadom house of A-7 at Kunthalloor where also two underground cellars were found wherefrom also he collected samples. He has also referred to Chirayinkil where cans were recovered. On the whole there are number of other corroborations to the evidence of PW-53. The Trial Court and the appellate Court have referred to the said corroborations and have given a finding that his evidence was materially corroborated in material particulars. In that view we need not take on ourselves the task of referring to all the corroborations. In paragraph 69 of the judgment of the appellate Court, the discussion has come about the evidence of this witness and we are satisfied by that. The appellate Court has also discussed about the ill- effects of methanol and has recorded a finding that the samples taken from the place belonging to A-7, more particularly, the syntax tanks, cans and other equipments, it was found that there was ethyl alcohol and methanol. We are satisfied with the findings given by the appellate court and the Trial Court and, therefore, we accept the evidence of this witness.

42. The argument raised was that this evidence could not be taken into consideration and it would be inadmissible because this witness, though was an accomplice he was neither granted pardon under Section 306 Cr.P.C. nor was he prosecuted and the prosecution unfairly presented him as a witness for the prosecution. The contention is clearly incorrect in view of the decision of this Court in Laxmipat Choraria & Ors. V. State Of Maharashtra [AIR 1968 SC 938]. While commenting on this aspect, Hidayatullah, J. observed in paragraph 13 that there were number of decisions in the High Courts in which the examination of one of the suspects as the witness was not held to be legal and accomplice evidence was received subject to safeguards as admissible evidence in the case. The Court held: "On the side of the State many cases were cited from the High Courts in India in which the examination of one of the suspects as a witness was not held to be illegal and accomplice evidence was received subject to safeguards as admissible evidence in the case. In those cases, s. 342 of the Code and s. 5 of the Indian Oaths Act were considered and the word 'accused' as used in those sections was held to denote a person actually on trial before a court and not a person who could have been so tried. The witness was, of course, treated as an accomplice. The evidence of such an accomplice was received with necessary caution in those cases. These cases have all been mentioned in In re Kandaswami Gounder(2), and it is not necessary to refer to them

in detail here. The leading cases are: Queen Emperor v.Mona Puna (3), Banu Singh v. Emperor(4), Keshav Vasudeo Kortikar v. Emperor(5) , Empress v. Durant(6) Akhoy Kumar Mookerjee v. Emperor(7), A. V. Joseph v. Emperor() Amdumiyan and others v. Crown(8), Galagher v. Emperor(10), and Emperor v. Har Prasad, Bhargava(11). In these cases (and several others cited and, relied upon in them) it has been consistently held that the evidence of an accomplice may be read although he could have been tried jointly with the accused. In some of these cases the evidence was re-ceived although the procedure of s. 337, Criminal Procedure Code was applicable but was not followed. It is not necessary to deal with this question any further because the consensus of opinion in India is that the competency of an accomplice is not destroyed because he could have been tried jointly with the accused but was not and was instead made to give evidence in the case. Section 5 of the Indian Oaths Act and s. 342 of the Code of Criminal Procedure do not stand in the way of such a procedure." The Court finally observed:

> "It is not necessary to deal with this question any further because the consensus of opinion in India is that the competency of an accomplice is not destroyed because he could have been tried jointly with the accused but was not and was instead made to give evidence in the case."

The Court has also observed in paragraph 11: The position that emerges is this : No pardon could be tendered to Ethyl Wong because the pertinent provisions did not apply. Nor could she be prevented from making a disclosure, if she was so minded. The prosecution was not bound to prosecute her, if they thought that her evidence was necessary to break a smugglers' ring. Ethyl Wong was protected by s. 132 (proviso) of the Indian Evidence Act even if she gave evidence incriminating herself. She was a competent witness although her evidence could only be received with the caution necessary in all accomplice evidence. The expression 'criminal proceeding' in the exclusionary clause of s. 5 of the Indian Oaths Act cannot be used to widen the meaning of the word accused. The same expression is used in the proviso to S. 132 of the Indian Evidence Act and there it means a criminal trial and not investigation. The same meaning must be given to the exclusionary clause of s. 5 of the Indian Oaths Act to make it -conform to the provisions in pari materia to be found in Ss. 342, 342A of the Code and s. 132 of the Indian Evidence Act. The expression is also not rendered superfluous because if given the meaning accepted by us it limits, the operation of the exclusionary clause to criminal prosecution as opposed to investigations and civil proceedings. It is to be noticed that although the English Criminal Evidence Act, 1898, which (omitting the immaterial words) provides that "Every person charged with an offence..... shall be a competent witness for the defence at every stage of the proceedings" was not interpreted as conferring a right on the prisoner of giving evidence on his own behalf before the grand jury or in other words, it received a limited meaning; see Queen v. Rhodes (1899) 1 QB 77." This case would bring about the legal position that even if the prosecution did not prosecute PW-53 and used his evidence only as an accomplice, it was perfectly legal. The evidence of such witness subject to the usual caution was admissible evidence. The contention of Shri Radha Krishnnan that his evidence would be inadmissible because he was not granted pardon or he was not made accused would, thus, be of no consequence and is rejected. In this backdrop, after considering the whole material and the findings of the Trial Court and the appellate

Court, we have no hesitation to hold that the Trial Court and the appellate Court were right in convicting A-7.

43. At this juncture itself we must also refer to the Trial Court's judgment which has painstakingly dealt with the huge evidence led on behalf of the prosecution against all the accused. We appreciate the efforts and the interest shown by the Trial Court in carefully analyzing and appreciating the evidence of as many as 271 witnesses as also 1105 documents and 291 material objects. Apart from the evidence of investigation witness from the police department, several injured witnessed were examined who were injured on account of drinking of the illicit liquor prepared and sold through agencies of A-7. The other batch of the witnesses are the attesting witnesses to the mahazars, the inventories and officers of the telephone department who were examined to prove the telephone calls made from various telephones to the accused as also the accused persons using the mobile phones. Officers of the mobile companies were also examined. PWs-197 to 203, 216 and 218 were doctors who conducted the autopsy of the 31 unfortunate men who died because of consumption of spurious liquor. Other doctors who treated the patients and the doctors who issued the injury certificates were also examined. We must mention PWs-233 and 253 who were the expert from forensic science laboratory, Thiruvananthapuram. Original accused No.27 turned approver and was examined as PW-173. Apart from these persons, S. Anil Kumar (PW-251), M. Madhu (PW-257), Pramod Kumar (PW-260) and PWs-263 to 278 were members of the special investigating team. As has already been stated, 1101 documents were proved including the mahazars, investigation papers like inquest reports, seizure mahazars, account books, building tax assessment registers, room rent registers, medical certificates, chemical analysis reports etc. We must appreciate the Herculean effort on the part of the investigating agency for collecting the evidence as also the efforts shown by the Sessions Judge. Amongst the material objects which came before the Court and were observed and commented upon by it include the pouch filling machine, vessels, synthetic cans, plastic cans, bottles etc. The Trial Court returned the finding that firstly it was established by the prosecution that the deaths injuries of the victims were caused because of consumption of spurious liquor with methyl alcohol. The Trial Court further recorded a finding that number of the accused persons sold the same. The Sessions Judge has dealt with the deaths of all the 31 persons and on the basis of the inquest report as also the evidence of other witnesses came to the conclusion that all these deaths were caused due to the drinking of illicit liquor mixed with methyl alcohol. The medical certificates as also the post-mortem reports have been meticulously dealt with para-wise with the evidence of the witness proving such certificates as also the evidence of the doctors. The Sessions Judge then went on to appreciate the evidence of the relatives of those persons who lost their lives. The prosecution examined about 33 witnesses on this question. The Sessions Judge went on to accept the evidence of all these witnesses regarding the reason of the death of their kith and kin. On the question of S.32, Evidence Act the Trial court has relied upon the judgment of this Court in Rattan Singh v. State of Himachal Pradesh [1997 (4) SCC 161] as also Smt. Laxmi v. Om Prakash [AIR 2001 SC 2383]. The Sessions Judge also discussed the evidence of the few of those witnesses who had actually consumed the spurious liquor and suffered injuries because of that. All these witnesses, number of which is substantial, deposed about the ill-effects felt after drinking from the shops where liquor provided by A-7 and carried by the other accused

persons like A-4, A-8, A-25 and A-30, used to be sold. On the basis of these witnesses and also on the basis of the doctors who conducted the post-mortem, the Trial Court had no difficulty to arrive at the conclusion that injuries suffered by persons including the accused as also the deaths were occasioned because of the drinking of the spurious and illicit liquor. The Sessions Judge ultimately gave a finding that it is only after drinking the illicit liquor that the concerned persons developed symptoms characteristics of methanol poisoning.

44. The Sessions judge went on to discuss the evidence regarding the conspiracy of A-7 with the other accused persons. For ascertaining the role of A-7, the Sessions Judge then referred to the evidence of A. Mohan (PW-127), Deputy Director of Income Tax (Investigation) as also the sworn statements of A-7 to A-15 recorded on 14.10.1999 under Section 131 of the Income Tax Act. The Sessions Judge on the basis of all this voluminous evidence recorded the finding on the way the business of A-7 was being managed. His examination and the replies given to the various questions were also considered by the Sessions Judge wherein he admitted about liquor business and his dealing with the Income Tax Department as also the accounts, the huge profits that he made from this business. He also accepted that his two brothers Sunil Dutt and Murleedharan were his partners and that the accounts were written by Balachandran (A-15). It was an admitted position that A-7 was in this business right from 1984 to 1991 which he continued for seven years and thereby started again in 1997-1998 and that A- 7 conducted 16 shops and his brothers conducted 10 shops. After dealing with the evidence regarding the accounts as also the various statements made in the income tax enquiries, the Trial Court went on to appreciate the other material regarding the purchase of shops. The Sessions Judge has then given the complete finding regarding the business of A-7 and the other accused. These accounts very significantly include the monies paid to the police officers of various ranks as also the excise officers and including. All this was indicated in the accounts in the code language. The internal arrangements of the business with other accused persons were also discussed and also the financial aspects. He has also discussed about he incriminating circumstances. Accused No.7 had employed 33 salesmen and 18 toddy tapers who were members of the Union. According to the Sessions Judge these employees used to keep away from the business and would only receive salary and allowances. All the toddy collected used to be kept in the godowns of A-7 which were raided by the police officers. The Session Judge then in paragraph 220 of his judgment has recorded a finding on the basis of the documents and the accounts that A-7 had meticulously managed his toddy business which was of huge magnitude. The Sessions Judge also recorded a finding that A-7 made huge profits of over 9.5 crores within a span of four months. By doing the toddy business alone he could not have earned even 1 per cent of the bid amount of Rs.4 crores. The Sessions Judge then dealt with the properties including the godowns which were raided and from where samples were collected. We have discussed regarding the properties in the earlier part of the judgment and so we need not repeat the same.

45. The Sessions Judge as also referred to the material objects found in some of these properties and has also referred to the fact that methanol was detected in the vehicles found parked in this plot. Accused No.7 was also found to be frequent purchaser of polythene pouches

from the evidence of K.S. Harish Kumar (PW-264), C.G. Perera (PW-78) and Exhibit P-83 of mahazar. Similar is the evidence of Peter Jacob (PW-81) referred by the Sessions Judge. The Sessions Judge then referred to the incriminating articles seized from the very premises occupied by A-7 analysis of which gave indication of nature of his business. These premises include Sreekrishna Tabuk Industries. After referring to various sections, the Trial Court traced the role of A-7 and other accused persons like A-4. His vehicles were found to be fitted with additional spring leaves and it was obvious that they were being used for carrying spurious liquor. The Sessions Judge also recorded Exhibit P-855 and 859 which were search lists and Exhibit P-860 which is the mahazar prepared by him in this regard. Some of the items seized by this search list showed traces of methyl alcohol. Exhibit P-861 was relied upon for this. The Sessions Judge refuted the contention raised by the counsel of A-7 that considering the scientific properties of methyl alcohol it was impossible for them to find the trace in some of the vehicles or in the cans etc. as they would have evaporated. For this, the Sessions Judge relied on evidence of PW-233, Sindhu, Assistant Director of Forensic Science Laboratory who had collected the trace evidence. Her assertion that methyl alcohol could be traced even after ten days could not be shaken and was rightly accepted by the Sessions Judge. Her evidence that methyl alcohol was found in the three chambers fitted in the car bearing registration No. TMY 8748 cannot be assailed on any count. From all this voluminous evidence ultimately the Sessions Judge came to the conclusion that A-4, A-8, A-25, 30, and others were the close associates of accused No.7 and were also involved in the illicit manufacture and transport of arrack. The sessions Judge also held that some accused were involved in manufacture of the illicit arrack. We have carefully gone through the evidence referred to by the Sessions Judge and endorse his judgment.

46. We have deliberately referred to the judgment in details as one of the arguments by Shri Radhakrishnan against the High Court's judgment was that the High Court has dealt with the whole matter in a perfunctory manner and that it has not considered the findings by the Trial Court nor has the High Court dealt with the main objections raised in their defence. We are satisfied with the judgment of the Trial Court insofar as this accused is concerned and the High Court has rightly confirmed the same. We accordingly dismiss the appeal filed by A-7.

47. We shall now consider the appeal filed by accused No.8, Vinod Kumar. He has been convicted for offences under Sections 324, 326 and 328 of the Indian Penal Code as also for the offence under section 57 A (1) (ii) of the Abkari Act and has been sentenced to undergo life imprisonment along with the fine of Rs.50,000/-. Has also been separately convicted under Section 57A (1) (i) as also under Section 55 (a) (i) and Section 58 of the Abkari Act. His conviction insofar as offences under Sections 302 and 57A (1) (iii) are concerned, the High Court has set aside the same. There is a specific finding in respect of his conviction under Section 120B IPC. The main evidence relied upon by the Courts below against this accused is PW-257, Mr. M. Madhu who conducted search being search mahajar Exhibit P.135. It is the contention of the prosecution that a search was conducted of a house which was under construction at that time and it belonged to A-8. It is claimed that plastic cans MO-32 and MO-39 to 43 vehicles were found in the premises. Exhibit P-782 which is the chemical analysis report suggests that traces of methyl alcohol and ethyl alcohol were detected in the cans as also in the samples taken from floor of the vehicles found parked in

the said premises. The prosecution has come out with a case that since his house was being constructed, A-8 took a house in front of this house, namely, Roshini on rent. This house was also searched and Exhibit P-111 was executed whereby a mono block pump set and a telephone bill was recovered. Fake number plates being MOs 83 to 86 were seized from the premises under Exhibit P-191. Some of these number plates related to some of the vehicles recovered from the premises i.e. the plot where the house was being constructed. Exhibit P-135 is the search mahazar and report relied on in this regard.

48. It is to be understood that A-8 is the real brother of A-7 and it is the contention of the prosecution that A-8 was fully involved in the said business of illicit liquor which was headed by his brother, A-7. The High Court in paragraph 81 of its judgment has held that the evidence adduced by the prosecution sufficiently established his complicity in the crime. The High Court has also relied on Section 58 A (5) of the Abkari Act which casts a burden on the accused to prove that he had not mixed or permitted to be mixed any noxious substance with the liquor. According to the High Court such burden has not been discharged. It was tried to be argued by Senior counsel Shri V. Giri that there is no veracity to the evidence relating to the presence of methyl alcohol in the floors of the cars or in the material objects found in the search on 30.10.2000. Shri Giri further strenuously asserted that even if Exhibit P-135 and the testimony of PW-257 and PW-253 are accepted still the accused could not have been booked for offence under section 57 A (1) (ii) of the Abkari Act. He suggested that there is no evidence to show that the accused had either mixed or permitted to be mixed any noxious substance. The learned Senior counsel also argued that the accused must himself know that whatever is being mixed with the liquor is itself a noxious substance which has the potential of endangering the human life and it is only when he mixes it in spite of the said knowledge then alone the offence under section 57A(1) (ii) could be established. The learned counsel was at pains to argue that there is nothing to prove that A-8 had any such idea that methanol is a noxious substance. The learned counsel then pointed out that there is no direct witness to depose about the steps taken by this accused for mixing methyl alcohol with ethyl alcohol or as the case may be toddy for making Kalapani. The learned counsel further argued that the evidence of PW-53 is of no consequence as it does not suggest that A-8 was aware of the mixing for noxious substance like methyl alcohol. He, therefore, urged that there is no evidence even remotely to connect A-8 with the mixing of noxious substance. Relying on the language of Section 57 A(1) (ii) it is the argument that it is only where the accused is a licencee under the Abkari Act and if any noxious substance is detected from any sample taken from any of the outlets operated by him then alone the burden of proving that he had neither mixed nor permitted to be mixed will be that of the accused. However, in the case like the present one there would have to be positive evidence to connect the accused with the actual act of mixing. According to the learned counsel, merely because methyl alcohol was detected from the traces of evidence collected from the cans and the cars which was seized on 30.10.2000 that by itself could not be sufficient to attract Section 58A(1) (ii). It could only indicate the involvement of the accused in transportation of the noxious substance mixed with ethyl alcohol. Learned counsel further contended that the evidence regarding the telephone calls having been made from the said number to the house or other places belonging to or under the control of A-7 which the prosecution sought to prove by producing a telephone bill in the name of Shyamala Kumari was also of no consequence. The learned

counsel argued that being the younger brother of A-7 there is nothing wrong if he made calls. The learned counsel further argued that the prosecution has relied on the fact that the number plates were recovered from a shed situated near Pandaksala godown actually belonged to some of the vehicles which were found in the house under construction belonging to A-8. It has been held by the Courts below that the fact that loose unattached number plates were actually recovered from the godown and a shed under the control of A-7 would show that A-8 was an active participant in the business conducted by A-7 and that he should, therefore, be treated as part of the conspiracy allegedly hatched by A-7. However, the learned counsel pointed out that firstly, the disclosure statement is inadmissible and secondly, the said discovery was extremely unnatural and artificial. The counsel pointed out that even if the said recovery is to the accepted it would be of no consequence insofar as the offence under Section 57A (1) (ii) is concerned. At the most, it would show that A-8 was a participant in the business and for that A-8 could be booked for the offence under Section 55. However, it will be totally insufficient for booking him for the offence under section 57 A (1) (ii). Lastly, the learned counsel argued that there is no clear finding for the complicity under Section 120B, Indian Penal Code. According to the learned senior counsel the gist of crime though alleged has not been proved at all and even if it is presumed that accused knew that methyl alcohol was being imported, it will be too much to presume that he knew about the mixing of the same with alcohol. The learned counsel argued that the agreement for the conspiracy, as the case may be, has not been proved at all and merely because there is a burden on the accused under Section 57A (5), that cannot be used for proving offence under section 120B, IPC. The counsel then made extensive comments on the law laid down in P.N. Krishna Lal v. Govt. of Kerala [1995 suppl.(2) SCC 187]. His whole stress was on paragraph 39 as also paragraph 46. The learned counsel pointed out that a strictly literal interpretation of the rule was not possible because it would virtually dispense with any burden on the prosecution to prove the offence. Leaned counsel argued that the initial burden of proving always would lie on the prosecution which should suggest the involvement of the accused in mixing of the noxious substance. It is only then that it will be the burden of the accused to prove otherwise.

49. We shall now consider all these contentions in the light of the findings by the Trial Court and the appellate Court. We have already considered the nature of burden of proof on the prosecution as also on the defence in the earlier part of the judgment while considering the case of A-7. The question of said burden has been discussed thoroughly in Krishna Lal's case (cited supra). There can be no dispute that the prosecution has the initial burden to suggest that the accused person was involved in the business of illicit liquor and that he knew the nature thereof. It is only then that the burden would shift to the accused to prove that he had no means to know about the nature of the business or the fact that the liquor was being mixed with noxious substance like methanol. Now here in the present case, the accused is the real brother of A-7 and there are number of other circumstances to suggest that he was actively engaged in the business. The High Court as also the Trial Court thoroughly discussed and considered the evidence and all the circumstances therein. In fact in the light of these concurrent findings, we need not discuss the whole evidence. However, it is clear from the evidence of discovery regarding the fake number plates that accused No.8 was neck deep into the business of spurious liquor. He was an active member in carrying the said spurious liquor and the fact that a vehicle under his possession found from his premises had the trace

of methanol is sufficient to hold that he had the necessary knowledge that methanol played a major part in the business which was headed by his real brother A-7 and in which he was an active partner. The contentions raised by Shri Giri that he may at the most be booked for transporting the spurious liquor is also not correct because if that is established then his active participation in the business also comes to the forefront. Thereby his knowledge that the liquor was being mixed with methanol has also to be presumed. There was no necessity for keeping the fake unattached number plates in his premises and the whole objective is clear of shielding the cars by attaching fake number plates to them. In paragraph 80, the High Court thoroughly discussed about vehicle PYO1 M 2464 which was sold by PW-68, S. Vasudevan and was found in the possession of this accused. The High Court has also discussed about the transaction of his house, namely, Roshini which was in front of the half built house where obnoxious liquor trade was going on. He had also taken a good care to un-authorizedly obtain the telephone number 620069 from Shyamala Kumari, PW-73. It has referred to the evidence of PW-260, Pramod Kumar who had proved the recovery mahazar Exhibit P-191. The evidence of PW-68, S. Vasudevan was also referred to by him. He also urged that the house did not belong to A-8. We have already referred to the circumstance that A-8 had taken a house right in front of the aforementioned half built house and it was at his instance that the real number plates of the car which had the traces of methanol were found. We, therefore, find no reason to discard the evidence of this discovery.

50. As if this was not sufficient according to PW-49, S. Shiju, who was the driver of A-8, liquor would be brought from the house of A-7 in the maruti car to be carried to the places such as Adoor, Ezhukone and Pathanapuram. It is this witness who established the nexus of A-8 with the two cars PY01 M 2464 and PY01 N 1014, MOs 41 and 43, respectively. Therefore, it is obvious that this accused was engaged in the business of manufacture, storing, sale and supply of illicit liquor along with A-7 which resulted in liquor tragedy. It is obvious that this accused was well aware of the nature of the business as he was thoroughly into it. Therefore, the offence under section 57A (1) (i) and (ii) as also the other offences under Sections 324, 326 and 328 read with Section 34, IPC have been rightly held proved against him. We are not impressed with the argument of Shri Giri that the discovery was unnatural and was farcical since both the Courts have held the said discovery to have been proved. Again his frequent calls to his brother would cut both ways and would also show that he was actively involved in the business. As we have already shown from our earlier discussion that it is not necessary that the accused had to mix or permit to be mixed the noxious substance himself. He could be booked on the same basis as A-7 has been booked by us on the same logic. Again we are not prepared to accept the argument of Shri Giri that A-8 had no idea that methanol is a noxious substance. If a huge business was going on and methanol was being imported along with ethyl alcohol in huge quantity and if the car which brought the methanol was in his possession and further if the methanol is established to be a noxious substance, it would be a travesty to hold that A-8 did not know that methanol was obnoxious substance. It is also well established that this accused could be convicted with the aid of Section 120B, IPC and also independently of the offence under Section 57 A (1) (ii) as he was not only the part of the business but had actively taken part in it. That by itself is sufficient to hold that he had the knowledge about the mixing of the ethyl alcohol with the

noxious substance like methanol and in spite of it,continued. His offence would be covered fully in the phraseology `or permits to be mixed'. We accordingly, confirm his conviction.

51. Shri Giri suggested that the chemical analyzer report was not put to the accused and took us through the examination of the accused. In fact vide the question numbers 51, 63, 131, 141,143, 219, 220, 221, 224, 263, 691, 692, 706 and 709 and, more particularly, question No.624 all circumstances regarding incriminating circumstances have been put to this witness. Therefore, this argument of Shri Giri has to be rejected.

52. Lastly, Shri Giri also argued about the sentence and contended that at the most this accused could be booked for the offence under section 55 (g) and (h). There can be no doubt that he can be booked for those offences, however, in our opinion, the Trial Court and the appellate Court have not committed any illegality in booking him under section 57A (1) (ii) also. Considering the number of deaths caused on account of the business in which this accused was neck deep, we do not think that any leniency can be shown. We accordingly dismiss the appeal of A-8.

53. This takes us to the case of A-4, who is another brother of A-7 and A-8. In fact the part played by A-4, Manikantan @ Kochani is not less than the part played by A-8, if not more. His connection with the business and A-7 is deposed by A. Raju (PW-40), an auto rickshaw driver who had seen A-4 coming out of the house of A-1 in a red maruti car. His business connections have been deposed to by M.M. Ibrahim (PW-65) and it is proved from the evidence of PW-37 that he also arranged for the finance of Rs. 30 lakhs at the instance of A-1. He was also identified by S. Dharmapalan (PW-36) as a person going to the house of A-1 with spirit in car. It is very important to note here that appeal by A-1 has abated on account of her death. It was A-1, who was the retail distributor of liquor. Allegedly her shop was for sale of toddy but it has come in evidence that liquor used to be supplied from her house. Few injured witnesses have been examined who were the customers of liquor saying that on the fateful day the liquor tested a little different. PW-53 in his evidence specifically involved this accused suggesting that the methanol was first brought in the plastic vessels and then mixed with spirit kept in the tank and thereafter it was supplied for sale. He specifically stated that this was done under the leadership of A-4 along with few others. He has specifically deposed that on the fateful day, MO24 car came to the godown of A-7 between 10 to 11 O'clock in the morning and that was being driven by Anil Kumar A-16. He further deposed that the essence i.e. methanol was filled in 10 plastic vessels and they were kept inside the godown. At that time, probably ethyl alcohol had not come and it was told to them that spirit load would come. He further deposed that the tanker of ethyl alcohol came at about 11 O' clock in the night, the driver of which was Shakthi from Tamil Nadu. It was then mixed by the workers of A-4 with the ethyl alcohol. He then suggested that the liquor was then dispatched in three vehicles to the dealers at Attukadavu and Pulimuttukadavu. Even after the tragedy happened, he deposed about the operations to destroy the spurious liquor. In the cross examination at the instance of this accused, beyond putting an innocuous suggestion that he was telling lies, there was nothing much. The accused was tried to be painted as the chief link of Kayamkulam lobby to which he specifically answered that it was Anil Kumar who used to do the same. This accused was also involved by V. Harikumar (PW-167) who also

knew this accused along with four other accused persons who were the driver of A-4. According to this witness, they used to purchase flowers to put in their cars. S. Vasudeven (PW-68) who is the vehicle broker also recognized A-4, A-7 and A-8 and deposed that he had effected sale of the car to A-8 and arranged two cars for the manager of A-7. However, the money for all this was provided by A-4. The High Court has also referred to the evidence of T. Shyjan (PW-173) an accomplice to show the involvement of A-4. Even Usha (PW-62) spoke about the adjacent building being rented out in the name of A-4. The search list Exhibit P-112 which was proved and produced by PW-270, various articles were seized and samples collected showed the ethyl alcohol and methyl alcohol which fact got proved by Exhibit P-782. These objects were MO-26 four blue cans and MO-27, 12 white cans. He along with his brother raised loans from Chirayinkil Service Cooperative Society, obviously for running the business along with A-7. He stood as a guarantor for A-7. Exhibits P-74 (d) (e) (f) (g) (h) were proved for that purpose. The High Court has discussed about his house properties from where number of cans were seized. It has also come in the evidence that the samples collected from the floor of these buildings showed the presence of methanol. Thus, it is clear that this witness was thoroughly in the business like his brothers A-7 and A-8. It is, therefore, clear that this was nothing but a conspiracy to run a patently illegal business along with his two brothers and others. It was argued by Shri Dave that the case against this appellant stands on the same footing as A-5 and A-11 and, therefore, he deserved to be given the same punishment. We do not agree. A-5 and A-11 along with A-6 and A-10 are proved to have physically transported the mixed substance to various places. However, they are not the persons who took active part in the business as its proprietors as A-4 did. In fact A-4 was at the helm of the affairs unlike those accused who merely transported the liquor. The case of A-4, therefore, is quite different. It was argued that he himself had not transported the noxious substance which was done by A-15. That may not be so, but he was practically managing the whole show. It has rightly been held by the Trial Court and the appellate court that A-5 was a worker of A-4 and took active part in the transportation of methanol. We do not accept the argument of Shri Dave that his case was comparable to that of A-5 and such a contention has rightly not been accepted by the trial and the appellate Court. His involvement in the business is so deep that it was clear that he was a conspirator and it was in pursuance of conspiracy that the whole liquor business which essentially involved the mixing of methanol with the ethyl alcohol was being conducted. Shri Dave tried to dub the evidence of PW-53 as a general evidence which argument does not impress us. We have already commented upon the evidence of PW-

54. Shri Dave then dubbed Section 57A as a draconian piece of legislation. Relying on the language of the whole section, Shri Dave contended like the other learned counsels that the act of mixing the noxious substance has to be proved for being punished under this section. We have already commented upon the real import of Section 57A of the Abkari Act. The language of Section 57 A (1) is wide enough as we have already commented in the earlier part of the judgment and A-4 will fit in the broad language. Shri Dave argued that the section does not use the word `knowledge' or `knowingly'. He also argued that mens rea to be read in all the offences unless the legislature has expressly or by necessary implications excluded mens rea as the ingredient of offence. Reading the language of Section 57 A (1) as it is, it is more than proved that all these accused persons entered into a conspiracy to do the illegal

liquor business and in order to succeed in their business, took recourse to mixing methanol with ethyl alcohol and brought out a new type of spurious liquor. In order to increase the potency of the drink and in order to probably give taste, they mixed the methanol. Once ethyl alcohol is proved to be a noxious drug, if they are found to be mixing or permitting mixing methanol with ethyl alcohol then the offence would be complete whether they had the knowledge regarding the qualities of methanol or not. That is apart from the fact that in this case itself to say that the accused did not know about the properties of methanol would be wrong. If that had been so they would not have been running between Hosur and Kerala to bring methanol in the cars which had fake registration numbers and secrete chambers. As many as 7 reported decisions were relied upon by Shri Dave for the question of mens rea. We have nothing against the principles laid down thereunder but we must point out that in none of the seven cases relied upon by the learned counsel the case related to an offence like Section 57 A (1). The whole discussion on mens rea, therefore, is of no consequence. The following cases were relied on:

"1) Lim Chin Aik v. Reginam [1963] 1 All ER 223

2) State of Maharashtra v. Mayer Hans George, 1965 (1) SCR 123

3) Sweet v. Parsley [1969] 1 All Er 347

4) State of Gujarat v. Acharya D. Pandey & Ors. (1970) 3 SCC 183

5) Sanjay Dutt v. State Through CBI (1994) 5 SCC 410

6) Kalpnath Rai v. State (through CBI) (1997) 8 SCC

7) B (a minor) v. Director of Public Prosecutions [2000] 1 All 833"

55. There can be no question about the absence of conspiracy. The whole business itself was a conspiracy. It may not be the conspiracy to mix the noxious substance but the fact of the matter is that in order to succeed in the business which itself was a conspiracy they mixed or allowed to be mixed methanol and used it so freely that ultimately 31 persons lost their lives. We are not at all impressed by the argument regarding knowledge. Shri Dave also referred to the case of P.N. Krishna Lal (cited supra). The argument was that if Section 57A (v) is to be worked out in its literal manner then it is the defence which would lead the evidence of disproving. The argument is clearly incorrect. We have already explained the responsibility on the prosecution in the earlier part of the judgment. In our view, in this case the prosecution has discharged its primary burden. The accused persons, more particularly, these three brothers have not offered any evidence so as to discharge the burden put against them under section 57A (1) (v). In this case the prosecution has clearly proved that there was a noxious substance which was likely to endanger the human life. Secondly, they have proved that substance was mixed, permitted to be mixed and was being regularly mixed with liquor. They have thirdly proved that the persons mixing had the knowledge that methanol was a

dangerous substance that aspect would be clear from the fact that after the tragedy A-7 went and punished his servants and remonstrated them for `not properly' mixing methanol with ethyl alcohol. Lastly, it is proved that as a result of mixing of methanol with the liquor and as a result of consuming such liquor as many as 31 persons lost their lives and number of others suffered grievous injuries. We reject the argument of Shri Dave that the initial burden was not proved by the prosecution which we confirm the finding of conviction and sentence as imposed against A-4. We accordingly dismiss the appeal filed by A-4.

56. This takes us to the SLP (Crl.) 842 of 2006 of A-25 represented by senior Counsel Shri Shekhar in which we have granted leave to appeal. The argument of learned senior counsel was almost on the same lines with that of Shri Dave and Shri Giri insofar as the contentions regarding the burden of proof and the interpretation of Section 57 A (1) were concerned. It is well proved by the prosecution that this A-25 was a major link used to purchase liquor from A-4 and he was the one to used to distribute the same. Learned counsel argued that this accused had no control over this business and he was merely transporting the spurious liquor and, therefore, he should have been booked under section 57 A (1) (iii). A-25 was selling liquor in retail through A-32, A-35 etc. A-25 and A-10 were the employees of A-4 who were supplying the liquor to A-21. Thus, he was getting the readymade liquor. As per the evidence of P. Thulaseedharan (PW-131), because of the liquor sold to his father on 21.10.2000 at 11 pm that his father was admitted in the hospital. Name of the father is Pachan. In fact, as per the evidence of PW-131, he was told by his father that he had consumed little from the liquor entrusted to him by A-24 for sale. Thereafter, he felt headache and abdominal pain. The prosecution suggests that later on he died. As per the evidence of P. Ramu (PW-163), his father used to drink the liquor supplied by A-25 and he had also seen on the fateful day, his father consuming alcohol supplied by A-25. Thus, his father who died was himself a further supplier of the drink, which was used to be supplied by A-25. The liquor sold on that day tasted differently, which was the evidence of M. Ponappan (PW-133). He had, however, purchased the liquor from A-32. When he enquired about the reason, he was told that it was liquor of A-7 brought through A-25. Evidence of T. Chandrasekhara Babu (PW-146) is also to the same tune. PW-173 is another witness who is an accomplice. He claimed to have known A-25. He was used to be given a canister whenever he became indebted. He used to sell 35 litres of liquor in that canister. Thus, it is established that A-25 used to take the liquor manufactured by A-7 and the same used to be supplied to him by A-4 and the same was distributed by him further. Obviously, this witness used to sell the liquor supplied by A-25 at a higher price of Rs.20/- per litre and he purchased the liquor from A-25 twice or thrice in a week. It was for the last time that he purchased the liquor from A-25 on 20.10.2000 as he told that he waited near Pallikkal temple near milma booth and after 10 or 15 minutes, A-5 and A-25 came there in a blue Maruti Car and five canisters of liquor were unloaded there. It was distributed amongst A-24, A-6, A-29 and A-28. It was A- 25 who asked A-32 to destroy the balance of liquor after the tragedy. The prosecution alleged, as the High Court has noted, that he absconded and he was arrested from K.S.R.T.C. Bus stand on 11.12.2000. The Trial Court thoroughly discussed his evidence. It was contended before the Trial Court that evidence of PW-173 could not be accepted as he was given pardon only towards the fag end of the case. The Trial Court and the High Court have found nothing wrong with the grant of pardon under Sections 306 and 307 of the Cr.P.C. The Trial Court has correctly appreciated

the legal position that evidence of PW-173 could not be accepted unless it is corroborated by other witnesses. A finding is recorded that the evidence of PW-173 was corroborated by PWs-131, 133 and 163 insofar as the role played by A-25 is concerned. Thus, the sale on the part of A-25 and his active participation in the business run by A-4 and A-7 was clearly brought out. He was convicted for the offence under Sections 57A(2)(i) and was heavily fined for Rs.50,000/-, Rs.25,000/- and Rs.2 lakhs on different counts including Section 55(a)(i) as also under Section 58 of the Abkari Act. He was, thus, in a position for distributors and it has come out in the evidence that the liquor sold by sub-distributors killed number of persons. The sub-distributors were none, but A-37, A-35 and A-41. It was the chain of distribution of liquor mixed with methyl alcohol. It is obvious that he was in possession of the poisoned liquor and does not seem to have taken care that it was not mixed with methyl alcohol. It was urged by the learned counsel appearing that there was no evidence on record to suggest that A- 25 had anything to do with the mixing of the methylene with the liquor. It was suggested that he had no control over the operation and he was a mere distributor and sold the liquor as he received from A-4. There is no doubt that this accused was acquitted of the offence under Section 120B, IPC by the Trial Court and there is no appeal against it. The conviction of this accused is for offence punishable under Section 57A(2) and on that account, he has been awarded life imprisonment. Shri V.Shekhar, learned senior counsel contended that since this witness was not a conspirator and had nothing to do with the business of A-7 and was merely a distributor, the sentence of life imprisonment is excessive. As against this, learned senior counsel appearing on behalf of the State contended that this accused cannot escape the conviction under Section 57A(2). The learned senior counsel urged that if this accused was selling the liquor, then it was for him to take the reasonable precaution to see that the liquor that he sells is not mixed with toxic substance. There can be no dispute that this witness had no control over the business run by A-7 and, therefore, he was rightly acquitted for the offence under Section 120B, IPC i.e. conspiracy. However, it cannot be said that his conviction under Section 57A(2) is incorrect on that count. We also find from the evidence of P.S. John (PW-252) that there was a search in the house of this accused on 23.10.2010 vide Exhibit P-803 and a bottle was seized which was mixed with ethyl and methyl. This was substantiated by Chemical Analysis Report (Exhibit P-784). He was also in possession of pure methyl alcohol, which is substantiated by Exhibit P-417, a disclosure made by him to M.G. Manilal (PW-269) as per Exhibit P-1019. Even this was found to be methyl alcohol. Once this fact regarding the possession of methyl alcohol is proved, A- 25 cannot argue that the possession of methyl alcohol was only incidental. There is no reason for keeping methyl alcohol with him. After all, he was not going to use it as a deodorant or perfume. This may suggest that he had a hand in mixing the alcohol with methyl alcohol, but there is no evidence for that and he has not been convicted for the offence under Section 57A(1). The words "omits to take reasonable precaution" would cast a duty on him to see that the liquor that he sells is not mixed with poisonous substance. Again, under sub- Section (5) of Section 57A, he was bound to prove that he had taken reasonable precaution, as contemplated in sub-Section (2). There is no evidence to the contrary nor has the accused discharged his burden in any manner. In our opinion, therefore, his conviction for offence punishable under Section 57A(2) is justified. However, we agree with Shri V. Shekhar, learned senior counsel, who suggests that he should not be punished with life imprisonment. We find that this accused is convicted for offence punishable under

Section 55 as also under Section 58, the maximum punishment for which Section is 10 years and that he has already undergone more than 10 years of imprisonment. The statement made by the learned senior counsel that the accused had undergone more than 10 years of imprisonment was not seriously controverted. In our view, therefore, this accused should have been dealt with not at par with A-7, A-4 and A-8 at least insofar as the punishment is concerned. We, therefore, deem it fit while confirming his conviction for the other offences and the sentences therefor to bring down the sentence from life imprisonment to what is undergone by him (relying on the statement made by the learned senior counsel that the accused has undergone more than 10 years of imprisonment). Insofar as the punishment of fine is concerned, we do not interfere and confirm the sentence of fines.

57. We accordingly dismiss his appeal with the modification in the sentence as indicated.

58. This takes us to the Criminal Appeal No. 1531 of 2005 filed by A-30. His case more or the less is identical with Suresh (A-25). As per the prosecution version, this accused had filled the liquor supplied by A-4 through A-5 and A-10 in covers and on the fateful night on 20.10.2000, he carried the same in Car bearing registration No. PT01M 8122 to the residence of A-39 and she, in turn, sold the same to the customers. It is ironical that A-39 herself also consumed liquor and died, so also one Soman Pilai and several others had sustained injuries. The evidence of PW-153 is clear enough, who complained that the liquor was found to be stronger and when he asked what the matter was, it was pressed by A-39 that the liquor was supplied by A-30. In fact, as per the evidence of a. Gopi (PW-153), he had himself found A-30 bringing the liquor. Similar is the evidence of N. Prasad (PW-154) who felt uneasy after drinking the liquor at 12 in the noon on 20.10.2000. He was required to be hospitalized. Even he has deposed that A-39 used to sell the liquor which was supplied to her by A-30 and A-31. He has also seen the liquor being supplied. In fact, he also spoke about the happenings on 20.10.2000. G. Raghavan Pillai (PW-164), the father of A-39 had also consumed the liquor and he also suffered. He also established the connection of A-30. Thus, there is enough evidence to establish that on the fateful day, A-30 accompanied by A-31 supplied three bundles of covers, each having 100 covers. He has made a disclosure statement that alcohol was poured in the closet of a latrine recently constructed on the eastern side of the Senior Orthodox Church. The liquid in this closet which was having smell of liquor was collected and it was established that it contained methyl alcohol. M.O. 256 is the sample while Exhibit P1001 is the chemical analysis report. One Badaruddin (PW-172) also spoke about the role played by A-30 who purchased the new car under hire purchase agreement. This was none else but car bearing registration No. PT01M 8122. He also discovered a sealing machine from the residence of one Sukumaran (PW-181). M.O. 97 was that sealing machine, which seizure was proved by S. Bhaskaran (PW- 175). This accused offered himself as a defence witness and admitted therein that the car was owned by him and since there was default in payment of the hire purchase installments, the car was seized by the financer. It is found by the High Court that his house was near to Senior Orthodox Church near to rubber plantation. He claimed that he was made accused because of the political enmity. There can be no dispute that there is enough evidence to show that A-30 was involved in the procurement of liquor from A-4. He then packed it in the covers and supplied to A-39. The High Court has not found him guilty under Section 304 or Section 307, IPC. Instead, the High Court has

booked him for offence under Section 57A(2)(ii), Section 55(a), (h) and (i) and Section 58 of the Abkari Act. Ms. Malini, learned counsel very earnestly urged that his conviction should not be maintained under Section 57A(2)(ii) as he did not have knowledge and he was not concerned with the preparation of the spurious liquor. We reject the contention on the same reasoning that we have given for rejecting the similar contentions raised on behalf of A-

25. The role played by both is almost the same. We also reject the contention raised that he could have been booked only under Sections 55(a), (h) and (i) and also under Section 58. The learned counsel has also prayed for leniency. For the same reasons that we have given in respect of A-25, we take the same view in respect of this accused also. The learned counsel made a statement that this accused was also behind the bars for more than 10 years, which contention was not seriously disputed by Shri J.C. Gupta, learned counsel appearing on behalf of the Government. We, therefore, set aside his life imprisonment and bring down the sentence to what has been undergone. We accordingly dismiss the appeal filed by A-30 with the modification in the sentence as indicated.

59. Before we part with this case, we must note some very disturbing facts which have been revealed from the voluminous evidence by the prosecution. Here was a person who was unabashedly running his empire of spurious liquor trade and for that purpose had purchased politicians including the public representatives, police officers and other officers belonging to the Excise Department. The trade was going unabated. Unfortunately, it is the elite of the society or the "haves" of the society who never purchase this kind of spurious liquor for the obvious reasons. It is only the poor section of the society which becomes the prey of such obnoxious trade and ultimately suffers. As many as 31 persons have lost their lives, about 5 or more persons have lost their eye-site forever and several others have suffered in their health on account of the injuries caused to them. It is only by an accident that the mixing was not done properly on the fateful day in the sense that the liquor mixed did prove to be fatal or injurious. But that does not mean when it was mixed on other day for months together that it was not injurious. The use of methanol was a dangerous proposition. It only shows that the human avarice could create hell in God's own country Kerala. We are not only perturbed by the enormousness of the tragedy but the enormousness of the liquor trade run by A-7 and that was under the so- called vigilant eyes of those who had duty to stop it. The avarice is not only on the part of the accused persons, but also on the part of those who benefit from this horrible business. Though 10 years have passed, the reverberations of this grin tragedy have not become silent. We hope and expect that the Kerala Government takes up this issue and takes definite steps for overhauling the system. We are worried about the rotten system that allowed such trade not only to continue, but to thrive. It will be, therefore, for the administrators and the Government to take positive steps, firstly, to overhaul the system by weeding out the corrupts by punishing those who are responsible for the whole system looking sideways. We do not know as to whether such an exercise is taken up, but if it has not been taken up the government is directed to take such steps. We do not think that the things would come under control unless such exercise is taken, so as to save the poor man from such ghastly disaster.

60. Again before parting, we appreciate the assistance that we have had from all the defence counsel as also from Shri A. Sharan and Shri J.C. Gupta, learned Senior Counsel, who appeared for the prosecution. We must make a special reference to the assistance that the Court got from Shri Mohan Raj, Assistant to the Special Public Prosecutor before the trial Court, who, at our request, spared his substantial time and labour for assisting this Court. We dispose of all the appeals accordingly.